S. Hrg. 100-733

FEDERAL EMPLOYEE LEAVE SHARING

HEARING

BEFORE THE

SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE, AND CIVIL SERVICE

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

MARCH 18, 1988

Printed for the use of the Committee on Governmental Affairs

U.S. GOVERNMENT PRINTING OFFICE
85-978 WASHINGTON : 1988

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

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FEDERAL EMPLOYEE LEAVE SHARING

FRIDAY, MARCH 18, 1988

U.S. SENATE,
SUBCOMMITTEE ON FEDERAL SERVICES,
POST OFFICE, AND CIVIL SERVICE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:03 p.m. in room 342 of the Dirksen Senate Office Building, Hon. David H. Pryor, Chairman, presiding.

Present: Senators Pryor and Stevens.

OPENING STATEMENT OF SENATOR PRYOR

Senator PRYOR. Ladies and gentlemen, the Subcommittee will come to order. Today the Subcommittee on Federal Services, Post Office, and Civil Service will conduct a hearing to examine the approaches to leave sharing and the issues involved in designing a permanent Federal leave sharing program.

Should a worker, a Federal worker, become severely ill, that worker can use both his sick and annual leave as well as advanced sick leave. After all leave options are then exhausted, unless they are eligible for disability retirement benefits, that worker has the choice of requesting leave without pay or quitting the government.

In the case where constant care for a terminally ill child is necessary, those options are the same. In either case, an individual may experience financial hardship or possible unemployment.

Leave sharing allows employees to donate some of their leave to coworkers facing personal or family medical emergencies. A program can be structured in one of two ways: One, by establishing a leave bank system, or two, by transferring leave from employee to employee. In either case, the economic hardship attendant upon exhausting one's leave options would be alleviated.

There's no question today as to whether a Federal leave sharing program is needed. In 1987 Congress directed the Office of Personnel Management (OPM) to establish a temporary leave transfer program. The overwhelming response to the pilot project underscores its necessity. Over 242 applications were submitted to OPM for three available slots. Because of the widespread support for this program, Congress directed OPM to continue its trial program government-wide through this fiscal year.

This afternoon we have an opportunity to establish a more permanent leave sharing program. There are now two bills pending in our Subcommittee which approach leave sharing in slightly different ways. My bill, S. 2140, establishes a Federal leave bank system.

Under my proposal, Federal employees would become bank members by donating a minimum amount of annual leave to the bank. In documented personal or family medical emergencies, members could then apply to the bank for additional leave after they have exhausted their own leave time.

My approach is very much akin to an insurance program.

Senator Domenici's bill, S. 1595—and Senator Domenici will testify in support of his legislation momentarily—would essentially expand OPM's leave sharing pilot project to all Federal agencies for 5 years. His legislation would also authorize an experimental program to provide outstanding employees with additional leave as a reward for performance.

The object of our hearing, then, is to help us determine the best approach to implementing a permanent Federal leave sharing program. Although Federal experience is somewhat limited in this field, we will learn from the Internal Revenue Service how well the pilot program has worked in the case of William Ault, a participant in the 1987 pilot project. We will also hear from witnesses who have had practical experience in administering or using leave banks or leave transfer programs.

There are almost 3 million Federal workers today, 18,000, by the way, from the State of Arkansas. Some of these employees may one day have a personal medical emergency, or that of a family member. Leave sharing provides a humane response to people's special needs. It is a positive public-sector personnel management innovation. I know that the witnesses will help us in finding the very best approach.

Senator Jim Sasser is unable to a attend today's hearing, but he has an opening statement that he would like inserted in the record.

[The statement referred to follows:]

OPENING STATEMENT OF SENATOR SASSER

Mr. Chairman, today we are dealing with an issue that will affect the well-being of a great many Federal employees.

Two pieces of legislation have been brought to our attention which reflect similar concepts in employee management. One is the "Federal Employer Leave Bank Act of 1988," introduced by my friend and colleague, Senator Pryor. Like the legislation introduced by our distinguished colleague, Senator Domenici, the Pryor Leave Bank Act would provide Federal employees with a way to handle the added stress and time demands of a personal or family emergency through the help of colleagues at the agency where they work.

Unfortunately, from time to time the unexpected does take control of an otherwise normal lifestyle. Events which we cannot foresee or plan for outpace the individual's ability to handle the situation. Employers need to develop a support system. They ought to be able to present a solution when their employees are confronted with such difficulties.

Today, we meet to consider such a solution. The Federal Employee Leave Bank Act will provide a way for Federal employees to assist coworkers by donating accrued but unused annual leave in the case of a personal or family emergency.

When the Office of Personnel Management conducted a pilot Leave-Sharing Program last year, it received a resounding response. Over 240 applications were received for three test openings. Obviously, there is a need and a demand for a program of this nature. Moreover, in exchange for the important benefit provided, the program will have virtually no budget impact, utilizing as it does the paid leave time of other Federal employees.

Now, I have considered carefully the alternatives set before the Congress. Before any of them are enacted we must obviously be satisfied that certain issues are adequately dealt with—for example, safeguards against employee coercion, to name but one. And I expect we will be provided much useful testimony today.

But I would like at this time to add as a cosponsor to the bill introduced by Senator Pryor, S. 2140. I believe that the threshold issue of direct leave donation, versus creation of individual agency leave "banks," should be resolved in favor of the latter. A leave bank would make it more certain that the benefits of a Leave-Sharing Program would be enjoyed equally by all eligible employees. Moreover, the bank concept would avoid administrative problems that can ensue from efforts to "track" individual leave donations to a designated eligible employee. At the same time, Senator Pryor's bill does retain that salient aspect of Senator Domenici's proposal: That concerned Federal workers may still earmark their own donations of leave time to specified colleagues. In short, Senator Pryor's bill will, in my opinion, combine the best aspects of individual altruism, universal availability and effeciency of leave sharing.

Thank you, Mr. Chairman.

Senator PRYOR. Our first witness today is Hon. Pete Domenici, U.S. Senator from the State of New Mexico. Once again, he is here to testify in support of his proposal.

Senator Domenici, we welcome you to the Subcommittee.

TESTIMONY OF HON. PETE V. DOMENICI, U.S. SENATOR FROM THE STATE OF NEW MEXICO

Senator DOMENICI. Thank you very much, Mr. Chairman. Might I just ask if my statement would be made part of the record.[1]

Senator PRYOR. It will be placed in the appropriate part of the record.

Senator DOMENICI. Mr. Chairman, I'm going to be as brief as I can. I would like to assure you that, while you have one concept, the bank concept, and I have a dramatic expansion of the experiment of personal exchange of accumulated time within an agency, I want to assure you that I think we ought to proceed. If the bank is deemed to be the most appropriate way, obviously so be it, then—let's proceed.

But let me suggest that, as I look at my proposal, I think it's not often that we can speak of a win-win-win program. Frequently we have two "win's." But in this one I think there are really three—and I think all three are very important. One, we have an employee of the Federal Government that does not have enough accumulated leave to take care of a serious illness or a serious problem at home. That person would win.

Two, individuals who contribute their time will win, and that victory will be in a very personal way. They will know that they have helped an individual because they will have been advised of the situation and personally contributed.

Three, the agencies and departments of our Federal Government will win because they will not spend any additional money, and there is a real chance that aside from the humane part of this, the decent part of this, the good business part of this, there is a chance that they will keep and get back a very good public employee rather than lose them.

So I think we have a rare opportunity here.

My only concern, if we proceed beyond the current experimentation, making it national and authorizing it permanently—my only concern about a bank is whether or not the impersonal nature of it might end up making it not work. And, secondly, I am concerned that it would be enmeshed in a maze of bureaucracy, and I am wondering if we won't be in a position where midstream, when the bank catches up with itself, we may have to cut people off and make kind of arbitrary decisions and not get back on board until the bank catches up again.

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[1] See p. 58.

And I think those problems can be looked at by the Subcommittee carefully in terms of the authenticity of the problems I've just described versus the more personal touch. And, clearly, there may be some problems with the personal exchange that I envision within an agency or department.

Suffice it to say that you and I know that we are frequently besieged with problems in this country, and the solutions are frequently extremely complicated, sometimes not achievable because of cost, and I think it's a rare time that we find a situation that has been called to our attention by Federal employees themselves that cries out for a solution, and that the solution is truly achievable in all respects.

This is not going to be a burden in terms of cost. Clearly, it is salutary and health from the standpoint of society. And last but not least, clearly it has a chance of making the Government's service and empoyees better not only for what they do but because we may enhance the opportunity to keep good Federal employees.

Now, I have other comments regarding the experiments that took place, but I want to do just two things. I want to thank you. In the appropriations process the pilot projects were about to die, as you recall; they had seen their day and we were still not able to get to this time of authorizing a program permanently. And, in consultation with you, we were able to put an amendment on the appropriations bill that continues the experimental stage of this even to this point today. I think that's healthy. The more we learn and know by the time you mark up, the better off we are. And clearly we have not stopped a good thing, even though it might be very small at this point.

And then I want to say that in my State this program and the potential for it was called to the attention of myself and one of our Congressmen by a marvelous lady, Geraldine Grenko—she had cancer. She did not make it under this program, but she did a yeoman's job of getting it to the attention of a number of people, both within the Administration and here on the Hill, myself included. And in her last days, when she thought we might get something permanently done, she had hope. We didn't make it, but she did wire me when we were working on the bill on the floor saying: just because it didn't work for me, I hope you understand that it's a good program and that many people that I work with wish they could help me, are hoping that they could—and sort of stay with it, get on with it. So I would like her telegram to be part of the record.

And I thank you, Mr. Chairman.

Senator **Pryor**. The telegram will be made a part of the record.[1]

Let me state, Senator Domenici, that I don't know which is the best approach to the issue that we are addressing today. I also want you to know, Senator Domenici, that I look forward to working with you on shaping a policy. Momentarily we are going to hear some other real-life stories about the pilot program, the results of the pilot program, and other programs that are working with regard to this issue.

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[1] See p. 223.

I would also like for you to know personally, Senator Domenici, this is not the first issue that we will have worked on together, and I hope it will not be our last. I pledge to you my full cooperation. I know that you have a busy schedule this afternoon, but you are more than welcome to join us here at the dais, if you prefer; if you do need to go, we will all understand. You are the father of this concept, and we want to recognize you for it.

Senator DOMENICI. Thank you. I will not stay. I am sure this is going to get very good attention from you and other members of this Subcommittee. And, as you might suspect, I have assignments that are more than a plateful for me.

Let me close with one observation, that I hope you will ask as you listen to those who are informed—and it makes great sense to me, and maybe it will to the Subcommittee—but I think there is a portion of this program that leave sharing maintains and has within it that we ought to try to maintain whichever way we go. And I don't know how to exactly phrase it, but let me try it this way.

I think our society has a tendency today to begin to do almost all good things very impersonally, and I think if there can be a personal touch remaining in this, if the bank program goes through, I hope you will explore that. It's sort of the difference between contributing to the United Fund, which is marvelous, and picking your very favorite volunteer organization that needs your help and that you can feel a reaction and a relationship with. And I think that's an important part. If we can preserve it in this program, I think it would be very healthy.

Thank you.

Senator PRYOR. Thank you, Senator Domenici. Our friend Senator Stevens has now joined us, and the record will reflect that Senator Stevens has been lodged in the elevator for the last 20 minutes—he got stuck on the way to the hearing. So he's a few moments late, but he's here and we look forward to hearing from you, Ted.

Senator STEVENS. Thank you, Mr. Chairman. I won't hold it up; I will just ask that my statement be printed in the record in full.

[Senator Stevens' opening statement follows:]

OPENING STATEMENT OF SENATOR STEVENS

Mr. Chairman, I appreciate your scheduling this hearing on the subject of leave sharing by Federal employees. I look forward to the testimony to be presented by our witnesses today.

I believe it is very important that we develop legislation to replace the interim procedures scheduled to expire at the end of this fiscal year. I'm sure each of us or someone very close to us has experienced the trauma associated with a personal emergency. The burden is greater when we do not have sufficient monetary resources to carry us through the difficult period. The concept of leave sharing which is currently being considered by both Houses of Congress is one way we can work to ease this burden.

Budget constraints have made it very difficult for the Federal Government to consistently present itself as an attractive and progressive employer. However, leave sharing is just the type of innovative and cost-effective thinking which can be used to enhance the image of the Federal Government as an employer. It will assist the employee experiencing difficulties while demonstrating the generosity and compassion of his/her fellow employees.

In my opinion, the task facing this committee is not whether we should have leave sharing but rather designing the most effective program possible. Mr. Chairman, I look forward to working with you and the other members of the committee in developing such a bill.

Senator PRYOR. We will now call our first witness, Mr. Michael Dolan. Mr. Dolan is the Assistant Commissioner of Human Resources Management and Support of the Internal Revenue Service. He is accompanied by Mr. Peter Scott, the Deputy Chief Counsel of the IRS.

We welcome both of you gentlemen. You may proceed with your statement, Mr. Dolan; and, if you would like, you may just informally give your statement or read your statement. Your entire statement will be printed at the appropriate place in the record.

Mr. Dolan.

TESTIMONY OF MICHAEL P. DOLAN, ASSISTANT COMMISSIONER, HUMAN RESOURCES MANAGEMENT AND SUPPORT, INTERNAL REVENUE SERVICE, ACCOMPANIED BY PETER K. SCOTT, DEPUTY CHIEF COUNSEL

Mr. DOLAN. Thank you, Mr. Chairman. I am very pleased to be here, as is Pete, both on behalf of Commissioner Gibbs and the men and women of IRS. And I accept your offer to put my complete statement in the record [1] and just give you an overview from my perspective.

Senator PRYOR. We look forward to hearing from you.

Mr. DOLAN. Thank you. At IRS, we look at the leave sharing procedures and program as a significant issue in and of itself, but I think we also echo Senator Domenici's belief that we are talking about something that has the potential to have a very profound and powerful impact on the organization, even beyond the people who are helped. Some of the experiences that I'd like to share with you this afternoon will go to reinforce that.

We are extremely pleased to have had three opportunities now to test leave sharing, one under an appropriations enactment and two that came as a result of individual legislation. We are also pleased that OPM has issued its regulations on the program, which we—in concert with our union, the National Treasury Employees Union—are in the process of making available to the rest of our organization. We've alerted our field organization to this program, and we know from them of over 200 instances in which our people are eligible for and desirous of participating in the interim program. So the need is clearly there.

What I'd like to do, Mr. Chairman, is to put this in a larger context, at least so far as the IRS is concerned. Like most private and public sector organizations, we at IRS find that we constantly need to stay ahead of the curve in terms of trying to maintain ourselves as a vibrant organization that can compete successfully in the applicant market, as well as retain those folks that we have on our rolls.

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[1] See p. 63.

Some 4 years ago, we took upon ourselves a strategic planning process that listed as one of our top organizational imperatives the enhanced recruitment and retention of skilled human resources. And over the last 4 years we have undertaken—again in concert with the National Treasury Employees Union—a number of initiatives designed to make us that competitive employer when it came to the applicant market place. More importantly, these efforts were designed to make us the kind of empathetic, personal, humane employer that stood to retain the kind of high-quality, skilled personnel that we currently have.

It's in that context, I think, that our leave sharing program is a powerful way to take a degree of humaneness, to espouse a degree of personal care and attention, to a work force that otherwise, as you well know, oftentimes finds itself struggling.

With respect to the four specific questions that you asked us to respond to today, what I will do is summarize our replies. As I think you know, Mr. Chairman, Bill Ault was a revenue agent in the Cincinnati District of the IRS. Bill, as you also may know, after his long struggle with leukemia, died on the 29th of December this past year. But we, as was Bill's immediate family, were very gratified that the leave staring provisions were able to help Bill in his last days, and to make his family experience, as well as his IRS family experience, richer because of it. Bill was one of the three folks who was selected by OPM to participate in the government-wide leave pilot.

Specifically you asked what we did to record the leave. We approached this in as nonbureaucratic and as direct a way as we could. The District Office employees in Cincinnati were aware of Bill's situation, as well as aware of the potential of this program.

So when news came through that Bill had been selected by OPM, the district was ready. Employees had already been advised by the District Director of the potential of this program and had been asked to think about the opportunity to contribute in this meaningful way. As soon as OPM selected Bill, the employees of the Cincinnati District gave what we felt was an overwhelming reaction in support of Bill's case.

A one-page memorandum went to all employees from the District Director; a copy is in the record. At the end of a couple of paragraphs of explanation, the bottom part of that memo said: "if you'd like to help Bill, please indicate the type of leave you'd like to transfer to Bill and the amount." So in the context of one piece of paper, people were asked to indicate their commitment and willingness. That piece of paper was returned by almost 300 people who collectively donated over 3 years' worth of leave in Bill's behalf. With just that one request, 3 years' worth of leave was accumulated for Bill's use.

As the OPM regulations at that point required, we used the leave first to liquidate Bill's indebtedness for advance leave. At that point, Bill had not only exhausted all sick and annual leave, he was at the legal limits of any additional advancing of leave that we could do as the employer. He also had a considerable amount of leave without pay, so we next went back and liquidated the leave without pay. And then, of course, we still had leave available for the time during which Bill was undergoing medical attention.

As I said, unfortunately, Bill died in December. At that point, some 1,700 hours of leave had been used, with the balance still available to Bill at that point. As the OPM regulations require, we are now in the process of prorating that back to the employees who contributed, on the same basis that they contributed to the original fund.

I would make the observation that this was certainly a new and ad hoc experience for us; we hadn't had lots of months or weeks to anticipate or build a bureaucracy, and we are probably further ahead because of it. We tried to approach it in the Ault case much as we would like to approach it under the interim regulations and whatever succeeding permanent bill is passed—very much as a personal, individual, non-bureaucratic exercise between a person and those he or she works with. In terms of accounting for the leave, we basically were keeping logs that showed that employees A and B and C had given X amount of sick and annual leave. It did require us to do some bookkeeping entries, because as we would debit it from a donor's account we would credit it to Bill's. We did that in a manual and sometimes semi-clumsy way, but with experience we can add some automation to that and diminish the overhead associated with doing that kind of thing.

I guess what I would say in a nutshell is that there isn't a lot of effort required to make the thing work, and work compassionately from our point of view.

With respect to one of your other questions, which went to cost, we did a rough calculation of that which we have submitted for the record. Given the context of this ad hoc exercise, we think it cost us around $5,000 to set up the Bill Ault case—to solicit, to administer, and then ultimately to prorate back the leave that Bill did not exhaust. That's across roughly a third of the people in the Cincinnati District.

In our case, Mr. Chairman, we have had three instances, as I mentioned, to be in the leave sharing business. Each and every time, the number of employees who have come forward to participate ranged between a third and a half of all the employees in the installation. They are major IRS installations: they are the Fort Lauderdale District, the Austin District, and Cincinnati, where we've had this experience.

The last question we were asked for some reaction to was any knowledge or concern we had about coercion. It certainly has not been our experience in any of the three cases that coercion was an issue or even a concern expressed by anybody. I think quite the contrary: the Directors in each of those three installations have said things to me like they have never worked in offices where they have seen a single ~~event more~~ powerfully captivate the group of employees involved, and it was really a question of having more people available and more time available than was necessary in each of the three cases.

I would say, in sketching out what we think our lessons learned were—obviously three instances don't an expert make—that some of what we would believe we've learned again echoes some of Senator Domenici's reactions. The first one is that flexibility is an imperative, especially given the fact, as you said in your opening remarks, that we are talking about some three million Federal employees who are arrayed in all different kinds and sizes of organizations. I think in considering a permanent bill, the fact that one organization may be very centrally located in a headquarters environment, versus one like ourselves—where we've got 112,000 people spread from two- and three-man posts of duty to upwards of 5,000 or 6,000 people in service centers—needs to be paramount. Even with our own organization, we believe there would need to be much flexibility in the way that we approach the management of this program, and that a lock-step approach would probably not serve us as well as one that had more flexibility.

The second point that I think can't be overstated, no matter what version of a permanent program goes in place, is the need to retain the human, the personal, the individual association with the program. I think the strength and the unbelievable impact on morale in our organization has come from the fact that people knew that in a time of specific individual need, they were able to make a specific individual kind of contribution.

And lastly—although I think this has now been cleaned up—the current interim regulations as they apply to the gift and conflict provisions set up a situation that it would (a) cause a fairly difficult administration of the program, and (b) probably create some fetters that really are not necessary. Their elimination would, I think, allow us to make this program a richer program still. Specifically, we have the instance where under a literal reading of the provision a Grade 7 revenue officer would not be able to contribute to a Grade 9 revenue officer, without regard to whether one had any line supervision or responsibility over the other. That would be a provision that we would hope could be addressed.

Overall, I'd say that we believe our investment in the program was extremely worthwhile. We are anxious to go further. As I say, we are poised with the National Treasury Employees Union to use the interim regulations to their full extent, and we are even more anxious for the permanent program to become a fixture in Federal employment.

We don't need to tell you, Mr. Chairman, that the IRS has started on a very significant journey of strengthening the quality of the products and services we offer the American taxpayer. I think it's become ever so clear to us that our ability to deal well with our own employees, in providing them a suitable work place and addressing their internal customer needs, goes a long ways toward convincing them that we are serious about the kind of customer support we want to the American taxpayer to have.

I am very pleased to be here, and would gladly take any questions that we might be able to answer.

Senator PRYOR. Well, thank you. That was a very, very fine statement.

Senator Stevens, do you have any questions for Mr. Dolan?

Senator STEVENS. Well, I am constrained to ask if you had the IRS examine the tax consequences of the program you undertook?

Mr. DOLAN. Well, we have, and I was smart enough to bring along my lawyer.

Senator STEVENS. Who paid the tax on the leave that was given?

Mr. DOLAN. The way it was set up, Senator Stevens, is that the tax was paid by the recipient of the leave. The way it worked in the Ault case and the others was that the employee involved was one who had exhausted all leave, and was therefore not in a position to receive any pay. The donations of leave meant effectively that the person drew a paycheck, and therefore it appeared in their salary and on their W-2, just like it would have had they been drawing from their own annual or sick leave account. So that is the way we treated it.

Senator STEVENS. And can a GS-9 give a GS-18 hour for hour so that the Government pays more money?

Mr. DOLAN. Under the current set of circumstances, there can be no contribution to someone of a higher grade or to someone who has any kind of a line relationship with a person, Senator, so that would not be possible.

Senator STEVENS. I don't understand that. Can only GS-18's give to GS-18's? Is that what you are saying?

Mr. DOLAN. A GS-18 can give to a 17 or a 16 or a 15, but it can't be the reverse. Essentially, under the current set of interim regulations and under the rules as we understand them, you would always be contributing to someone either at your grade or below your grade.

Senator STEVENS. And in terms of the leave time, a person who has been in the government 15 years or more gets 8 hours every 2 weeks.

Mr. DOLAN. Correct.

Senator STEVENS. One who has been there for just up to 3 years gets 4 hours every 2 weeks. But no one can accumulate more than 240 hours to carry over from year to year.

Are they giving leave they would lose anyway?

Mr. DOLAN. Most of the versions that I've seen, as well as the procedures that we are currently operating under, have some very specific limitations on the amount of leave that can be donated. As I understand both the interim and the proposed regulations, there will still be a limit on donations. For example, half of what that person would accrue in a given year would be the outer limit of what they could contribute in any event. Then, as you get into a use-or-lose situation towards the end of the year, there is a further governor on the ability to give leave where the amount of leave left to be donated exceeds number of days left in the year. So it's set up, I think, to preclude end-of-the-year dumping, for lack of a better term.

Senator STEVENS. Did you ascertain how much it would have cost us as a Government just to extend the leave we should have extended in the first place?

Mr. DOLAN. I'm not sure I understand the question.

Senator STEVENS. Well, we are calling on employees to donate their leave time to other employees who are in need. Has there been any determination in your agency what would happen if we just say those people who really do have a catastrophic illness are entitled to extended leave?

Mr. DOLAN. No, sir, we have not looked at that. It is properly within OPM's purview.

Senator **Stevens**. I would be very interested if you could tell us that. It seems to me we are going through a lot of administrative hoo-ha to end up paying the taxpayers' money to people who are in need. I mean, why shouldn't we just pay it to them? Can't we get a catastrophic illness definition and just say if you are an employee of the Federal Government and you get a catastrophic illness, you get extended leave? Do we have to have all this extra administrative cost? I can't really say that I accept your tabulation of the cost of donating all those hours and keeping track of them and making sure that the accounting is right and then giving them back if they are not used.

Mr. **Dolan**. I would be the last one to try to suggest, Senator, that this is a no-cost or no-burden proposition. There clearly is that. I guess the point I was trying to make was that we think the impact on the individual in the organization is worth the investment.

Senator **Stevens**. I've got an idea. What if we would as united taxpayers, instead of our Government, extend catastrophic illness coverage to the employees that work for us. Maybe private employers would do the same thing, provided Uncle Sam would treat their gift as a deductible expense for the employee that should have been working. I'm not sure you treat this the same way for a private employer, would you? And we are saying the employee pays the tax on this money and it's not a gift from the employer or the government.

I'm not sure you'd treat that the same way if a private employer was to do the same thing and in effect pay someone beyond the terms of the employment agreement. I think you would treat it as a gift. Would you check that for the record and get it to me?

Mr. **Scott**. We can do that for you, Senator. I think that's probably not the case, however. Generally speaking, you would have tax consequences. It is very difficult for an employer to make a gift to an employee under the tax code as it exists now.

Senator **Stevens**. It's also very difficult to take a deduction for wages paid to an employee that go beyond the employment agreement if the employee is not working. I've got an idea some of your colleagues would look askance at that. And I think we ought to treat the employees of the private sector with the same advantages as we would the public sector. But, I think the public would welcome us adequately providing for employees of the Federal Government who, because of catastrophic illness, need additional leave and extending the leave to them without all this folderol.

I'd appreciate if you'd give us a comment.

Mr. **Scott**. We can supplement the record to do that, Senator.

[The information referred to follows:]

Under such circumstances, the payments by an employer to an employee would generally be characterized as additional compensation, and not as a gift, for Federal tax purposes. This is so because these payments arise out of an employment relationship.

Because these additional payments are characterized as compensation, they would be deductible by the employer as wages.

Senator **Pryor**. Thank you, Senator Stevens. A couple of questions. One, I believe you stated, Mr. Dolan, that in the account which was designated for the late William Ault, there were about 5,100 hours left over in this account.

Mr. Dolan. Some 1,700 hours of the donated leave had been used, with balance of some 5,100 hours remaining.

Senator Pryor. Now, you are going to send that leave back on a prorated basis, it sounds like, to the employees who made the contributions?

Mr. Dolan. That's correct, because those are the guidelines within which that experiment was conducted.

Senator Pryor. Has there been any questioning or efforts made to ascertain the desire of these employees to leave the 5,100 hours in a bank or a pool?

Mr. Dolan. To be very honest, Senator, we have not tried to ascertain that—we've just not done that.

Senator Pryor. All right. How was Mr. Ault chosen to be the subject of the letter? I think it's very commendable. I was just wondering if a committee decided that this one individual needed the support of his fellow employees, and you posted a letter on the bulletin board. What about William Ault, who is now deceased? What will happen in other cases?

Mr. Dolan. In the instance in which William Ault was chosen, Senator, we were trying to identify throughout the IRS organization people who could potentially qualify for one of the three designations that we knew OPM was going to be in a position to make. So we did attempt at that point to identify those cases that were most severe, most pressing. And the definition we gave "pressing" was folks who were most in need, as we could ascertain it.

Certainly, under a permanent arrangement we would want to be more sophisticated about the way that we were aware and were made aware of the circumstances that warranted this kind of treatment.

Senator Pryor. This was in your Cincinnati office?

Mr. Dolan. Yes, sir, it was, although we surveyed IRS offices throughout the country at the point that we knew this provision was going to be available. We were hopeful that we could get more than a single nomination approved, because we had other nominations that we thought similarly worthy.

Senator Pryor. What about an IRS employee, let's say, for example, in your Akron, OH, office who wanted to help the late Mr. Ault by giving, say, five hours or ten hours. Would that have been permissible?

Mr. Dolan. Under the way that we set up the program, we confined it to the individual's district. And what you are going to do is trip me up on geography, because I can't remember now whether the Akron office is a post-of-duty under the Cincinnati District, or whether it is under the Cleveland District. But basically, those posts-of-duty and those people making up the Cincinnati District were the folks that we confined our original solicitation to in Mr. Ault's case.

Senator Pryor. So you tried to confine just to that district.

Mr. Dolan. To the district office.

Senator Pryor. To an IRS district.

Mr. Dolan. To an IRS district, yes.

Senator **Pryor**. Let's say if there is a collection officer out there and he wanted to—what position did Mr. Ault hold?

Mr. **Dolan**. He was a revenue agent.

Senator **Pryor**. All right, let's say if there is a collection officer out there and you had an interviewer or auditor and they were at the same grade level but performed different types of function within the Service, could they——

Mr. **Dolan**. Absolutely.

Senator **Pryor**. They could give?

Mr. **Dolan**. They absolutely could. District functions range from clerks to taxpayer assisters, revenue agents, and revenue officers. Everybody in the District was able to contribute.

Senator **Pryor**. I think the ultimate disposition of the time left in a bank or pool is going to be a very interesting issue. I'm not saying it's going to establish a precedent, but I do think it would be very interesting to monitor the ultimate disposition of the time left in the bank or pool.

Mr. **Dolan**. Right now, Senator, the conditions under which we entered the Ault arrangement require that we pay back on a prorated basis the hours that are in excess of those need. We are not making an independent judgment about what we would rather or rather not do; we think that that is consistent with the terms of the original arrangement.

Senator **Pryor**. Let's say if there were 300 hours left over and people said I don't want this back, I want to give this to someone else in need, can you transfer that time to the next fiscal year or do you have to turn it back by the end of the fiscal year? Are there any yearly curtailments on your option?

Mr. **Dolan**. I don't believe there are, but I'm answering that offhand, instead of from——

Mr. **Scott**. I think my reading of at least the OPM regulations would require us to give it back rather than carry it over. But I'm sure OPM can address that.

Senator **Pryor**. I see. Very well, we will get those regulations and include that section in the hearing.[1]

Mr. **Dolan**. Senator, as I said, we are about to move with the interim regulations now, which would allow us to open up the program throughout the organization. And clearly, were there additional people in the Cincinnati District who would qualify under the same terms, we would like to make the opportunity available to people who had put leave in Bill Ault's account to move it into somebody else's account in the Cincinnati district.

Senator **Pryor**. All right, well, let me give you another hypothetical—I know these are hypotheticals. Let's say Mary Smith works for the IRS and Mary Smith has had some sickness and she's used up all her leave time, her sick leave, her annual leave, everything, for some reason or another—let's say she's been sick or maybe her mother's been sick, she's been looking after her mother. So Mary Smith now decides she's going to get married and she wants to go on a honeymoon. She wants to be gone a week and she can't figure out how to do this. So the employees there in the office say, listen, if Mary wants to get married, I'm going to give her two hours of my sick leave or two hours of my annual leave and I'm going to give it to the Mary Smith foundation or pool or whatever.

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[1] See p. 224.

Would that be possible?

Mr. **Dolan**. Not as we currently understand it.

Senator **Pryor**. It has to be a sickness, is this correct?

Mr. **Dolan**. I think there would be the ability to read "personal emergency" as it pertains either to the individual or their family as something exceeding sickness, but I don't know that—maybe wedding qualifies as a personal emergency.

Senator **Pryor**. I think getting married is a personal emergency, don't you? [Laughter.]

Mr. **Dolan**. At least trauma; I don't know about emergency.

Senator **Pryor**. I'm just having fun with you now. I have no other questions. I think Senator Stevens asked Mr. Scott the question I was going to ask about the tax implications; that's been discussed. I believe the IRS is inviting us to address the tax treatment. I don't know whether we need to address that right now. I like the idea of programs like this working for awhile before we start moving into more new tax changes or tax laws. But if you do think of something that we could do on the congressional end, I wish you would let us know—maybe a point of clarification, maybe committee language in something. We might address it in that way. Do you have a response?

Mr. **Scott**. As you know, Senator, we sent you a letter dated March 17 in response to your request to Assistant Secretary Chapoton to address the tax consequences. To summarize that, we basically think they are somewhat uncertain, and that could result in some long period of uncertainty. There's nothing in the Internal Revenue Code currently that directly covers this. It is certainly possible to interpret the Code so that the donor would be taxed rather than the donee on the principles of law called assignment of income. In fact, that's one very likely interpretation. But it is a very complex and uncertain business, as you know. And it might well be advisable to fix it while you are doing the program.

Senator **Pryor**. I do have a response, your letter of March 17 responding to my letter of February 23, I believe. I will place this letter in the record at the appropriate point—I think that would be good for the record to show that letter and to have the benefit of your thoughts.[1]

Mr. **Scott**. Well, let me say, too, that both our office and Assistant Secretary Chapoton's office will be very pleased to work with you or the Subcommittee in any way that you would like.

Senator **Pryor**. Thank you. Well, I think what you have done in the Internal Revenue Service in this instance is very exciting. Certainly you have pioneered in an area that very few of us know much about—and I compliment you for doing this. I thank both of you for appearing today. You've shed a lot of light on the issue and answered a lot of good questions. We appreciate very much your participation.

Mr. **Dolan**. Thank you, it was our pleasure.

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[1] The letters referred to may be found starting on p. 215.

Mr. SCOTT. Thank you, Mr. Chairman.

Senator PRYOR. Our next group will be a panel comprised of Mr. Peter Rozantes, Ms. Miriam Cameron, Mr. Richard Bank, and Dr. Mollie Bowers.

We welcome this panel this afternoon. Mr. Rozantes is the section chief, Department of Administrative Services, Personnel Division, State of Connecticut; Ms. Cameron is director, Department of Employee Assistance Service, Montgomery County, MD, Public Schools; Mr. Bank is the executive director of the Montgomery County Education Association; and Dr. Bowers is an associate professor of business, University of Baltimore.

I appreciate your participation today.

Why don't we attempt, let's say, a 5- or 6- or 7-minute rule—I'm not going to be real strict this afternoon—there are no more votes in the Senate so I don't have to go back and forth to the Chamber. So why don't we attempt to either read your entire statement or summarize it. The balance of your statement will be printed in the appropriate place in the record.

Mr. Rozantes.

TESTIMONY OF PETER ROZANTES, SECTION CHIEF, DEPARTMENT OF ADMINISTRATIVE SERVICES, STATE OF CONNECTICUT[1]

Mr. ROZANTES. Mr. Chairman, members of the Subcommittee, thank you for the opportunity to describe Connecticut's two programs. One is a sick leave bank for two of our bargaining units, and the other is a donation of accumulated leave time for 10 bargaining units and for our managers and confidential employees.

Our first sick leave bank was negotiated in 1979, in a bargaining unit of approximately 3,000 employees. The administrative and residual bargaining unit covers all of our accountants, our purchasing officers, and our professional business administration types.

The second sick leave bank was bargained with our education administrators, approximately 230. That was negotiated in 1984, it's a relatively small group. In August 1986, we negotiated for the remaining bargaining units, the remaining eight bargaining units and our managers, a process of donation of accumulated leave time. This would be vacation and personal leave, not sick leave.

Our experience with the sick leave bank for the administrative and residual bargaining unit is as follows: we negotiated a situation by which management would donate 2,000 hours to the bank. This would be sick leave. Members of the bargaining unit would donate 1 day per calendar year until the bank reached a total of 35,000 hours. Quite bluntly, management was very concerned about this negotiation, a concern was that it could fuel an abuse of sick leave, and our experience with the sick leave bank in the first year was in fact that that bargaining unit had experienced a slight increase in sick leave usage.

Subsequent experience has indicated, however, that this was just a normal variation and the following year, the average sick leave usage decreased in that particular bargaining unit.

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[1] See p. 86 for Mr. Rozantes' prepared statement.

The bargaining unit has had some experience, we routinely review 15 to 20 requests for long-term sick leave from this bank. There is a committee made up of two managerial representatives and two union representatives that review and screen the requests for donations—not donations, but actually stipends from the bank. We have had an experience rate of about 90 percent of those applied for are approved; those who are disapproved, are usually done on the basis of that the illness itself was not considered to be serious enough or, in fact, that the employee had been counseled for abuse of sick leave previously.

One of the requirements for the use of both of our banks is that there be no history of abuse of sick leave, that it is truly to be used as part of a catastrophic illness environment.

In talking to those of us who have—and I helped negotiate this particular contract in 1979 and I served on the subcommittee—in talking with the union representatives, they intend to stay with the sick leave bank. The smaller bank, the educational professional bank, really does not have that much of a track record. They pattern themselves after the administrative residual bank; we have only granted three requests since 1984 for that bank. And I really don't think that with 230 employees, it has much applicability to the Federal model.

The administrative and residual union has been very pleased with their sick leave bank. They do not intend to change it nor do they intend to convert change it or do they intend to convert to the donation sick leave bank we're using in the other situations.

The donation program, as I mentioned, has been in effect since August 1986. It came about as a spontaneous request by a number of employees so that they could help an ill coworker in one of our mental health hospitals. It was a truly needy situation, it was clearly a long-term illness. Negotiations were not underway at that time. The State of Connecticut's management chose to reopen negotiations with these bargaining units and offered a sick leave bank across the board. Any bargaining unit that wished to discuss it with us, we would reopen negotiations, and in fact we did.

All of these programs for the sick leave donations have been successful. Some of the bargaining units have a 5-year requirement, that you must be a state employee for 5 years. Others, as little as 1 year, but again, this should be the donations for serious or catastrophic illness. We have only been maintaining requests for the last 6 months; and in that 6 months, we have received approximately 25 requests for donations. It is my office that approves or disapproves the requests. We have returned one for lack of documentation; when the documentation was provided, we subsequently approved the request.

It is our philosophy on any sick leave donation—I'm sorry, accumulated leave donations—that management will play a neutral role. It is truly to be a spontaneous request by an employee or the employee group. We don't wish to be placed in a role of either cheerleading or being accused of forcing employees to provide donations. So our role is very benign. We process the debits and credits to the appropriate accounts of the individual employees on their time and attendance records, and we do the ultimate approval or disapproval.

As I mentioned, the programs have been very successful; we apply the same concept to our managerial and confidential employees as well. We have received a request from one of our more aggressive unions, the union that takes care of our hospital and health care professionals, which is one bargaining group, and the hospital and para-professional group to allow these donations to occur within the whole bargaining unit.

Currently, donations are limited to the bargaining unit within the specific State agency. The concern of the union in our observation has been that where a bargaining unit is represented in a small extent in an agency, for example, you can have only a handful of maintainers in a particular agency, or in an agency that's particularly small. Our own agency is about 900 employees, but we have others that are as small as 100 where a donation process will not provide as much security to the employee.

Consequently, the bargaining unit representatives have requested that the donation process be expanded so it can incorporate all employees within a bargaining unit. We have resisted it at this point because we are fearful that complexity, particularly the debiting and crediting of accounts would be too great. I think this will probably evaporate as time goes by, as we become more experienced with the sick leave donation process as it is.

By the way, we have been listening to your other concerns and reading about your concerns. We do not feel in Connecticut that a donation by different members of the bargaining unit is a violation of our code of ethics. Obviously, if we hear of any coercion attempts to force people to donate sick leave, we will act accordingly. It is not within the context of what we are bargaining for, within any of these agreements, and as I say, we are not—and we have run our concerns on ethics through our state ethics panel and no conflict of interest has been found.

Our long-term evaluation of both programs, particularly the sick leave bank in A and R, is that it really does require a minimum of administrative cost, both programs. And we have been pleased with both. Obviously, the unions have been more pleased with the sick leave bank.

We have a philosophical difference, quite bluntly, about a sick leave bank. Perhaps it is our concern that sick leave is not a right, like vacation, which is paid back at the person's termination or retirement from state service, but rather something very special. I think we had a philosophical concern very early on in 1978–79 when we were bargaining, that there was a danger attached to placing sick leave in a bank. I think much of that concern has evaporated.

As I say, our real concern is that the donations be for, again, catastrophic illness and for serious illness.

Senator Pryor. I want to thank you for your statement. Let me ask you one quick question and then we'll go to Ms. Cameron. I'll have a couple more questions later.

Does a person have to exhaust all of their leave time before they become qualified to make application for some extra time?

Mr. Rozantes. It depends on the process. For donation of sick leave procedures, we have negotiated an exhaustion of all sick, vacation and personal leave.

In one of the bargaining units that utilizes a sick leave bank, the education professionals, you must exhaust. Significantly, that bargaining unit, by the way, and I forgot to mention this earlier, requires that the sick leave which was provided out of the bank be returned to the bank by the employee if they recover.

The Administrative and Residual bargaining unit allows the employee two options: One, you wait until you exhaust all of your leave before you apply or you become eligible to apply after exhaustion of sick leave and when only 60 days of vacation or personal leave remain. The sick leave bank for A and R only pays 50 percent of the person's wage for 100 days. The concept of leaving 60 days in the employee's personal bank is so that they can apply their accumulated vacation time to make up the difference so that they can continue to receive full payment for as long as possible.

Senator **Pryor**. Thank you. Ms. Cameron.

TESTIMONY OF MIRIAM K. CAMERON, DIRECTOR, DEPARTMENT OF EMPLOYEE ASSISTANCE SERVICES, MONTGOMERY COUNTY PUBLIC SCHOOLS, ROCKVILLE, MD [1]

Ms. **Cameron**. Mr. Chairman, members of the Subcommittee, I appreciate the opportunity to be here. It gives me an opportunity to thank Congress and the Federal Government, the National Institute on Alcohol Abuse and Alcoholism, and the Eugene and Agnes E. Meyer Foundation for funds that were originally distributed to establish the Employee Assistance Program in the Montgomery County schools. I also need to state for the record that I speak here today as an individual, not as an official representative of the school system nor of any of our bargaining units.

However, as I was preparing the material for this presentation it became immediately apparent to me that the entire structure of our department, the way that we operate, and the way that we work with individuals with enormous physical, mental, emotional, and personal needs is integrally related to the availability of the sick leave banks.

To put the sick leave banks in context in Montgomery County schools, I think it would help to know a little bit about the school system and about the leave program that precedes use of the banks.

Montgomery County schools has about 13,500 employees, 164 schools and about 95,000 students. We cover an area of 500 square miles just north of Washington, DC.

The leave package in Montgomery County is a very generous leave package and unlike some other agencies, there is no "use it or lose it" policy. One can only carry over and keep on the books 20 days of annual leave at the beginning of the fiscal year, July 1. Any excess leave on June 30, either annual or personal, is automatically rolled over into the sick leave. This means that individuals over a period of time can accumulate an enormous amount of sick leave on their own.

When the first sick leave bank came into operation in 1971, and it was the MCEA bank, there was a donation at that point in time of 2 days of sick leave, and sick leave only. I remember it well, because I didn't have enough sick leave on the books to join the bank, and I had to wait to join until the next fiscal year which was 6 months later, to put my two days into the pot.

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[1] See p. 132 for Ms. Cameron's prepared statement.

The Montgomery County schools also have one other unique type of leave. I would say it is very similar to that which Senator Stevens was talking about, it's called extended leave. It's three-quarters pay; you do not have to pay it back; it's a gift of the Board. Some people call it mercy leave and it preceded the origination of sick leave banks and definitely is limited to severe and unusual and catastrophic illnesses.

One of your questions to me had to do with abuses of leave. My written testimony goes into detail on five theoretical type cases. I'd like to share one of those cases with you, and then I'd like to ad lib about a teacher that I talked to last night because she asked me to share some things with you.

The case I want to address from my testimony is a case that I've identified as Andrew. Andrew was a professional in the school system and his diagnosis was AIDS. Andrew had begun working in a new position when following a cold and a bout of pneumonia, he learned that he had pneumocystis carinii pneumonia (PCP), which is, as you are aware, one of the many diagnoses for AIDS.

He requested that he be allowed to return to his former position because he knew the work and he felt that he'd be more comfortable there. Although physically and mentally able to work, Andrew was not permitted to return to work. He was not allowed to work in any capacity until the school system had developed a policy on AIDS.

When the decisions were made, Andrew was deemed eligible to return. However, in the months that had ensued, some of his most productive time was lost. During this entire time, Andrew was on sick leave. He was also on the sick leave bank, the MCEA sick leave bank. He spent several months in his new assignment. A very short period of time thereafter, his illness progressed. After about 6 weeks in the hospital he died.

The point here is that Andrew was not only the victim of a tragic disease, but I think he also was one of the early employees who bore the brunt of the lack of knowledge about the implications of his disease in the work site, the lack of an organizational policy at the time, the political realities of the time—and Montgomery County, I might add as an aside, is a very political county—and the organizational fears of public reaction. One could argue that denying him the right to work when he was medically able to work was an abuse of his rights and an abuse of sick leave and the sick leave bank.

However, an equally cogent issue here today is one which we are discussing. Could Andrew have managed as well as he did without the sick leave bank? In fact, could he have managed at all? So what this case illustrates, I believe, for us as we move more and more into the Age of AIDS, is the critical need for organizational policy and the urgent need for alternative support systems for persons with AIDS. Andrew was fortunate in that he only sustained a modest loss of income during this terminal illness.

I'm afraid that since the red light went on, I can't share——

Senator Pryor. Ms. Cameron, do you have another particular story to share?

Ms. Cameron. Yes, I do, and I'd like to share it, because there's a question in Andrew's case about abuse. There is no question in the case I want to share with you about abuse.

The teacher's name, and she has given me permission to use her name—is Barbaraann Neidenberger. She said, "Tell them my whole name; Barbaraann is one word."

Barbaraann Neidenberger—I talked to her long distance last night—Barbara's dying, she's in Indianapolis. She said, "Tell them, Mimi, tell them that I was able to teach for 4 more years because of the MCEA sick leave bank. If it hadn't been for the bank, I wouldn't have been able to teach the rest of those 4 years."

My first involvement with Barbaraann was several years ago after that 4-year teaching stint. Over that period of time, intermittently, she was able to use the bank. Barbaraann is an absolute medical basket case. She has diabetes which is totally out of control, she has carpal tunnel syndrome, she has just recently gone blind in one eye, she has diabetic retinopathy, she has no circulation in her legs, and she also has environmentally induced allergies and asthma. I could go on and on and on.

Barbaraann was the person—if anyone in the room lives in Montgomery County—who ran the Superintendent's Writing Awards for the last 2 years. It's a very significant program for kids in every school in the county. She was able to do that because she was reassigned temporarily, covered by the bank and had a sit-down-type job where she could use her enormous skills and her talents on a periodic basis, even though she could no longer be a resource teacher nor teach in a regular classroom.

Barbaraann told me last night that she taught Connie Morella's son when he was in ninth grade. I've known her for years and she never told me that before!

And so as a testimony to Barbaraann Neidenberger and Andrew, sick leave banks work and they work enormously well.

Senator Pryor. I want to thank you very much for those two very touching and meaningful cases. I may have a couple of questions in a moment. Our next witness is Mr. Bank. Mr. Bank, thank you.

TESTIMONY OF RICHARD BANK, EXECUTIVE DIRECTOR, MONTGOMERY COUNTY EDUCATION ASSOCIATION

Mr. Bank. Thank you, Mr. Chairman. I appreciate your inviting me to appear this afternoon and to discuss MCEA's sick leave bank, and also to discuss the concepts of shared leave and leave bank programs. I'm sort of the other half, Mimi is management, I'm union.

I think that my written statement[1] sets out in pretty great detail how our bank works, and I don't think it would serve any useful purpose to go over all the details again.

I thought what I would rather do is maybe just expand on a few of the points that I made in the written statement and also perhaps talk about a few things that I did mention in the statement that are of interest to the Committee.

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[1] See p. 159.

First, I do want to concur with Mimi in terms of the value of the sick leave bank. I cannot tell you how many of our members have said this saved my life, literally. I think they mean psychologically because in a time of catastrophic illness to have the cushion of knowing that you're going to be supported until you get better——

Senator PRYOR. How long have you used this leave system in Montgomery County?

Mr. BANK. 1971.

Senator PRYOR. Were you the first to employ it?

Ms. CAMERON. MCEA was the first of the four banks. MSEAD (ph) was the second, but I think it was transported from New York.

Mr. BANK. It is a wonderful benefit and many people say it is the best benefit that they have as far as employment is concerned.

One of the issues that you asked us to address is administrative problems, and I think in my written statement, I didn't really touch on that point. We do have one administrative problem that creeps up, and that is this: not rarely, we will have someone apply for sick bank benefits and then we discover that they have never enrolled in the sick bank. Our sick leave bank requires that people enroll within a circumscribed period of time in order to receive benefits.

That's very difficult to resolve, because we send every new hire that comes in a packet explaining the benefits of the sick leave bank and, in fact, they're asked to signify by their signature that they have read the sick leave bank package and understand that they have to enroll separately in order to become members of the sick leave bank. But what happens is that people will say either we didn't understand, we never got the packet or we didn't understand that when we signed it, that was only a acknowledgement, we thought that was an enrollment, or they say I did send in the enrollment form and you just never got it.

We're trying to work out those kinds of problems, but they're very troubling especially when somebody is ill.

I have to say, however, that the cause for potential abuse is greater so when people say "you just didn't get it." We have a pretty strict rule that we do not allow those people to apply for sick leave benefits.

There was a time when it was considered whether we should use certified mail to try to take care of that problem, but that gets into the whole question of bureaucracy and formality, and balancing those considerations, we decided not to do that.

Another area that I think is inconstructive is usage. I mentioned in my written statement that our sick leave bank almost went bankrupt twice because of usage. I should say that I am fairly new to this and I'm not aware personally of all the history of the sick leave bank, but I understand from people who have been at MCEA for a long time, that the usage has been cyclical, it has gone up and down, there isn't really a level pattern to how it's being used over the years, but when the sick leave bank almost did go bankrupt, the solution was to assess everybody an additional day.

The reaction to that specifically was predictable, there was a great deal of anger on the part of a number of sick leave bank members. There were cries of abuse, a number of people withdrew, some people had already exhausted their sick leave and didn't have the sick leave to pay the extra that was necessary for the assessment. In those cases, what we did was to allow those folks to pay the extra assessment the next year.

The story has a good ending. We instituted some rules that made it more difficult for people to join simply at the time they became ill. We instituted some waiting periods. The sick leave bank is now in very good shape, and we didn't have to take some steps that were considered, and I want to tell you what they were because I think they're relevant to the kinds of things you're considering.

When the sick leave bank became imperiled, one possible solution was to create a waiting period, an additional waiting period to save money on every claim, ten days, two weeks whatever it is. Another one was to pay 75 or 80 percent of income rather than 100 percent of the income, which is what our bank does pay. A third was to decrease the number of maximum days available, a fourth was to pay benefits only for hospitalization, instead of the current system which is very flexible. We pay for periods of time when people are not in the hospital as well.

We also considered limiting the use of the bank for maternity related disabilities. We have a lot of those because we have a high percentage of females in the work force. And we considered changing the contribution structure so that those more likely to use the bank, those who had lower sick leave balances would contribute more days to the bank.

We didn't do any of those. The measures that we took were moderate, and they all worked.

One last thing I would like to say, I think that the sick leave bank has been an unreserved success. We butt heads with management quite bit in the course of collective bargaining and this has been one area where I think there has been very smooth sailing. Our committee that runs the sick leave bank has two union members, both of them are classroom teachers and one member of the administration. They never disagree.

People seem to understand that this is a non-partisan issue and it creates a tremendous amount of good will.

Senator Pryor. Mr. Bank, I appreciate that. I did not know that your program had been in existence for this period of time. I'm very impressed.

Dr. Bowers, we look forward to your statement.

TESTIMONY OF MOLLIE H. BOWERS, PH.D., ASSOCIATE PROFESSOR, UNIVERSITY OF BALTIMORE, AND ARBITRATOR [1]

Dr. Bowers. Thank you, Mr. Chairman.

One of the issues you asked me to address was why the private sector isn't leading this discussion instead of the Federal sector. I'd like to add that my view is not simply from the ivory tower; I've been an arbitrator for the last 12½ years and I hope that you and your colleagues will remember that, because some of the stories

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[1] See p. 171 for Dr. Bowers' prepared statement.

I'm going to tell aren't quite as heart-rending in the same way as those who have preceded me.

Where the private sector is concerned, I think there are several reasons why they are not leading the way. Where large organizations are concerned, merger acquisition is one of the biggest games in town, and takes up a lot of time and resources.

For many private sector enterprises, large, small, and in-between, regaining or maintaining a competitive position is also a very time consuming process these days, one in which cost saving measures, primarily, labor costs, have been the focus of the way to regain the competitive position. So, we've seen concessions asked for in wages and a shift where health care, pensions and holidays are concerned from the enterprise to the individual. So, there aren't too many enterprises out there looking for ways to add to their costs or to keep people out of work, no matter how bonified the interest in leave sharing or how heart rending the stories are.

I think other factors that have contributed to this are the state of the unions, the economy, the prevailing political and legal milieu and some mistakes perhaps that the unions have made themselves have resulted virtually in the decimation of the labor movement in this country. Without organizations such as the one my predecessor on this panel represents to speak for them, who's ears are going to listen under those pressures, although there are a few private sector companies that are looking at the leave bank and leave donation programs. I think that's an ample summary of where the private sector is at, and it probably does not surprise anyone that those are generally the reasons why they haven't looked at this issue as seriously as you and your colleagues.

With respect to the two bills before your Subcommittee, I'm very concerned that we do something that generalizes the Federal sector other than relax the prohibition against extending leave. I think this needs to be worked out on an agency-by-agency, and probably location-by-location, basis, as I indicated in my written testimony, so that special problems can be dealt with. It may also seem that we should have unanimity so that there's fairness, equity and consistency. However, I think there will be much more greater lack of that if the policies are doctored across the board, whether it's leave sharing or leave banks.

I think the question of leave abuse is a critical one, although it has not come up in the experiential testimony that's been given. Because of the limited numbers of experiments heartrending cases, where most of would have donated time, but consider, since I was asked to testify before this Committee, I got a phone call from a set of public sector parties, which you will understand why they don't want to be named, so that a woman could mediate a dispute where a person asked for extended leave who happens to be black and has AIDS. The majority of the coworkers do not want that person to have any time under any circumstances from that bank.

It is a very ugly side of the marketplace, but you must anticipate that not all of the times that people want to use these banks, where access is asked for or donations solicited, and I don't mean that in the sense that people will be brow beaten, but times when it's time to put in each year in the insurance plan idea, they're not all simple questions.

One employer said to me, for example, when he heard the story about the woman from New Mexico who wanted to return to work, We have enough problems dealing with all those pregnant women we have to let off. How could we plan our staffing and our work flow if we had some, and I won't use the word he did, person who is coming back and forth to work whenever they were able to.

I think this is a realistic problem that we must face, that all interpretations will not be equal. I think it's absolutely imperative also that you find a way not to have to restore leave once it's donated.

You have a very high possibility of adding layers and layers of bureaucracy to administer these leave banks and that certainly is not an additional layer that you need to put into that pot.

I also think that it's important to have a board as you suggest that would administer the program, but I think you're going to have to find a more fair and equitable means of establishing membership on the board, under your bill, as I understand it, at least one position would be left to an employee or to a union. The potential would exist therefore, for management to dominate in determining what the interpretation of necessary or important or major or personal leave would be and what kind of flexibility someone is to get to recuperate, how much time. Whether a prior leave abuse should be looked at; whether you should have access to leave more than once; such as in the example I gave you of a location which was primarily populated by women who might need it for not only child care, their own personal needs, but also elder care.

Since the red light now has gone on, thank you very much for inviting me to speak before you.

Senator **Pryor**. You and the other witnesses, Dr. Bowers, have been most cooperative this afternoon in not only coming but also supplying this Subcommittee with a lot of information we have not had.

I want to ask a couple of quick questions, if I might, to Mr. Rozantes and Ms. Cameron. Do you believe that a leave bank is—and I'm not talking about a long argument here—do you believe a leave bank is better than a donation program and why. I know that Senator Domenici and I—I'm not saying we have different points of view—but we do have different pieces of legislation that represents a point of view and I think each one of you could help us with.

Mr. **Rozantes**. I really don't have a preference. I think our philosophy is whatever the bargaining unit is that we're working with will deal with it. As I mentioned earlier, I saw some real advantages to a leave bank in those small areas where a donation would not be effective. On the other hand, the union solution of opening up our particular regulation or agreement—negotiated agreement—to allow donations to cross agency lines would in essence resolve the one aspect of it.

I think what we're looking for is a humane search for protection against those who are terribly ill, and each, I think, addresses that issue in a somewhat different way. Clearly, a donation policy can come up short for people who are terribly ill, because the 25 or so requests that we've processed in the last 6 months have wound up donating 25 to 30 days, in some cases there have been less.

The sick leave banks have typically provided the employee with more. On the other hand, we've also had a lot more experience with our sick leave bank than we have in the donation process. One of the concerns that other people have expressed, is that if you have a bank, there's not this feeling of generosity or camaraderie or helping a co-worker. The union we're dealing with, the A and R union, is a very aggressive union, and they publicize in their newsletter, in fact, that a fellow employee from this bargaining unit has been helped.

So I think that feeling of helping the fellow employee has also been applied to the sick leave bank, again through the efforts of that particular bargaining unit.

The bottom line is, whatever helps the employee, we look into. We are concerned, obviously as part of management, with extraordinary or high costs of administration and we certainly don't want to use any of our program to fuel additional abuse of the sick leave, just the kind of willy-nilly use of sick leave as it occurs, as a method of supplementing vacation. We will resist any efforts to use our bank or donation programs for anything but serious or catastrophic illness.

Senator PRYOR. Thank you. Ms. Cameron.

Ms. CAMERON. Yes, as I was listening to Senator Domenici, it occurred to me it doesn't have to be either/or—it can be both. And I would like to suggest that you kind of hold that as a possibility.

I have talked to a number of people in personnel about shared leave, and they all expressed concern about it—and also in payroll. It becomes a very complicated administrative process to handle. It's rarely approved in our school system, although it has been. I think the example that was given just before is a critical example to keep in mind in terms of if you have a shared leave policy, then what about the person that nobody likes, what about the person that drives everybody crazy, or the drunk or whatever—and that doesn't mean they are any less sick, but they may not get the donations. What about the prejudices against minorities, and so on?

We believe—or at least the folks I talk to—that it destroys the philosophy of saving for a rainy day, of self-insurance. You know, it never occurred to me until I read all of this stuff that what I was really doing was also giving to my fellow employees. So, yes, I don't have the warm fuzzies that go with that; it was kind of like taking care of my own problems.

But, as Rick pointed out, if an employee comes and they really need it and they didn't join, for whatever reason, there's the opportunity that I think that people can rally around—in unusual circumstances, or the brand-new employee, or the one who had used up all that they were eligible for and still needed the time—then their colleagues could rally around.

There's the element of creating an undue emotional hardship on the donor as well as on the recipient. There's kind of a sense that, well, if she's giving I ought to give, but I don't really want to give, because—and it puts people under a pressure that maybe they don't need.

But an even bigger concern that I would have is so many of the people that I work with, for whatever reason—they are shy, they are poor, they are proud, they have stigmatized illnesses like AIDS or alcoholism and so on—they are not going to have the courage or they may not want to ask somebody to help them. People don't like to beg, a lot of people. You know, there's a real privacy thing there. And if you make a bank available, it's an automatic withdrawal from your paycheck, like a Christmas club, or whatever, you never notice that sick leave day that you don't have because it never shows up anyway. But it's awfully nice to have when you need it.

Those would be my reasons.

Senator **Pryor**. Very good. Well, whatever plan we ultimately decide on, or maybe both—combining them, who knows—the things that you have told us today are going to be very helpful in guiding us in doing something constructive and, hopefully, making as few mistakes as we can. We have a tendency here—and I speak of Congress as an institution—of messing things up most of the time. And I hope we don't this time. That's why we've called this hearing, to try to get as much expertise and guidance beforehand.

You have all been very cooperative. Thank you very much.

I'm going to reverse our schedule here just for a moment. Our distinguished Office of Personnel Management witness-Mr. Anthony F. Ingrassia, the Deputy Associate Director, Personnel Systems and Oversight, Office of Personnel Management—to go to a briefing in the Appropriations Committee in a few moments. We look forward to your statement, Mr. Ingrassia, and appreciate your participation. The second panel will follow Mr. Ingrassia.

TESTIMONY OF ANTHONY F. INGRASSIA, DEPUTY ASSOCIATE DIRECTOR FOR PERSONNEL SYSTEMS AND OVERSIGHT, OFFICE OF PERSONNEL MANAGEMENT [1]

Mr. **Ingrassia**. Thank you very much, Mr. Chairman, and I particularly appreciate your willingness to reschedule the order of witnesses.

Let me say at the outset that the Office of Personnel Management has been a strong supporter of the congressionally enacted experimental leave-transfer programs in the last 2 years. There has been a growing interest in permitting Federal employees to donate leave to fellow employees who are gravely ill or who have some other kind of severe emergency and have exhausted their own leave.

This year, under the authority of the Continuing Resolution, we are operating a temporary government-wide program that will permit person-to-person transfer of annual leave. Under this program, employees may transfer unused annual leave to the leave account of a fellow employee who is experiencing a medical or personal emergency and would otherwise have to go without pay for a substantial period due to the unavailability of paid leave.

This existing program is substantially different from a leave bank approach.

I should note, incidentally, that S. 2140, your bill, Mr. Chairman, has several significant improvements over other proposals that we have reviewed. We have been very concerned over proposals that would permit the transfer or donation of sick leave, since that would be very costly to the Government, and we are pleased to see that S. 2140 is limited to the donation of annual leave.

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[1] See p. 183 for Mr. Ingrassia's prepared statement.

We also like the tighter definition of "medical emergency," which would be limited to situations where the medical condition of the employee or family member would require the employee's prolonged absence from work and would result in a substantial loss of income due to the unavailability of leave.

Despite these positive features, we do not believe a leave bank approach is the best way to address the leave-sharing situation. And in the interests of time, Mr. Chairman, let me just outline what we believe are problems with the leave bank approach as contrasted to the leave-sharing approach. Many of these have been mentioned by the previous witnesses, who while in discussing benefits in a more positive vein, nevertheless did address what can sometimes happen with the leave bank approach.

One concern, consistent with Senator Domenici's views, is that the leave bank makes for a more impersonal approach, would likely cause a decrease in donations, have less of the positive impact on morale that we heard from the IRS representative, and perhaps make it more difficult to assess the legitimacy of the individual needs.

In addition, there is difficulty in making decisions among competing needs for finite resources. We had that very difficult situation last year under the congressional temporary program where we had over 240 requests and had to select just three, of which Mr. Ault was one. That is a very difficult situation.

It is more likely, in our view, that employees will dump use-or-lose leave under a leave bank than under a leave-transfer situation because they are not dealing with a specific individual's problem that could come up at any time; they are dealing with a situation where there is a bank and they have to contribute leave to become eligible. When it nears the end of the leave year, even under the provisions of your bill and the other bills and our own regulations that prevent donating more leave than the days that are left in the leave year, it's still rather easy to anticipate excess leave and put it in the leave bank. This becomes a cost to the Government, even in an annual leave situation, because we have around $90 million every year in unused leave that is of no cost to the Government, because it is not used, it's lost. If that leave is then put in a leave bank, that becomes a cost to the Government.

We also feel that the leave bank approach fosters the notion of entitlement, of grievances, disputes. This is contrary to what generally is a very positive win-win, or, as the Senator said, win-win-win situation. It adds difficulties to what is an ideal area for labor-management cooperation. And we've heard numerous examples this afternoon of positive labor-management cooperation.

Nevertheless, under existing law these decisions of the leave boards would be subject to grievance and arbitration unless the legislation specifically excluded any review or appeal of board decisions.

Boards, in order to be successful—again we've heard this—require limits on eligibility, amounts received, percent of income restored; they also require mandatory donations and may require additional donations. We may wind up with employees who are not eligible, and that results in pressures on the Congressmen or on the agency to deal with that specific situation.

We think it's also more likely that Government will be pressured to replenish the bank when donated leave is insufficient to meet needs.

I think that probably sums up our views. We do appreciate the interests the Senator and the Subcommittee have given. We are positive supporters of leave transfer in dealing with the problems of employees who have had a serious loss of income.

Senator PRYOR. Tony, I thank you. I may send some questions to you in a day or two and I would certainly appreciate your response.

One quick question I might say, then we'll let you go to your meeting. I share the concern that you've expressed about the very difficult nature of identifying the most deserving leave recipient, but I also have a great concern that a voluntary program would benefit only those who might be willing to openly disclose their personal situation or circumstances or, you know, maybe those who are the more popular people within their work group. I wonder how would the proposal you support, or the concept that you support, ensure that the most needy of the group needing leave would benefit from the program?

That's a question I'd like to leave with you. If you don't want to answer that right now, you can do it in writing next week.

Mr. INGRASSIA. Let me address that just briefly, and then if there is a specific written question we will be happy to respond—our feeling is that the needs of employees are well-known in a work group. For example, as I indicated—last year we had over 240 requests with practically no publicity; IRS's testimony indicated that they already are aware of another 200 within IRS who are ready to apply and receive help. We think a bill that would permit another 3 to 5 years' experience—there are differences in the bills that are before the Congress—would give us an opportunity to see whether in fact some people are reluctant to come forward, and whether the little people really aren't taken care of. One thing, labor unions are very good at looking out for the little guy, the little person, and there are ways to make needs known without having to come forward personally.

Senator PRYOR. We thank you, we wish you the best, and we appreciate your contribution to this afternoon's hearing.

Mr. INGRASSIA. Thank you very much, Mr. Chairman.

Senator PRYOR. We are going to call our next panel, Mr. John Mulholland, Mr. Robert Tobias, and Ms. Beth Moten. I would like to state that there will be a 2- to 3-minute recess, and I shall return shortly. Thank you.

[Brief recess.]

Senator PRYOR. Our meeting will reconvene, and we appreciate the panel's understanding about our little glitch in our schedule. Mr. John Mulholland, we look forward to hearing your statement at this time.

TESTIMONY OF JOHN MULHOLLAND, DIRECTOR OF FIELD SERVICES, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES [1]

Mr. MULHOLLAND. I want to thank the Chairman for giving us this opportunity to speak. The AFGE represents 700,000 Federal workers and this is an issue of a great concern to us.

The specter of being confronted with the choice of either holding one's job or tending to a seriously ill spouse or child haunts too many Federal workers. It is a cruel choice and a choice that need not be faced if there are appropriate personnel policies in place. And we commend Senators Pryor and Domenici for their innovative approaches.

Essentially, both of these bills set up a 5-year experimental program whereby Federal employees would be authorized to contribute their annual leave to other employees who are facing medical or family emergencies when the recipient employees have used up their own leave. In both bills, leave sharing is limited to annual leave. We encourage the Subcommittee to consider broadening the pool of potential donated leave to include sick leave as well as annual leave. This may violate the cost-neutrality of the bills, but such costs would likely be quite small, given the limited number of employees who would qualify for the leave.

The basic differences between S. 1595 and S. 2140 is that with S. 1595 leave is donated and received on an individual case-by-case basis, while with S. 2140 employees generically contribute to a leave bank and contributors are eligible to receive banked leave for medical emergencies. Conceptually, S. 1595 is more like a charity with employees contributing their leave to those who have the misfortune to need such leave. On the other hand, S. 2140 is more like an insurance program with employees voluntarily contributing a small portion of their leave to cover their own risk of needing such leave. By and large, AFGE favors the approach taken in S. 2140.

When we testified in the House on H.R. 2487, which is similar to S. 1595, we raised several concerns which are also relevant to S. 1595. One related issue is the issue of coercion. Section 6337 of S. 1595 explicitly forbids direct or indirect coercion of employees to contribute; however, there are no penalties attached to such action. But on a more fundamental level, whenever the leave recipient is in a managerial position and in the future will have a major say in the employee's promotions and job evaluations, there is fertile ground for the appearance if not the reality of favoritism. It is difficult to see how the appearance can be avoided unless the legislation explicitly bars the donation of leave to one's direct supervisor.

There also seems to be an existing statutory ban on supervisors accepting items of value from their employees which may create some problems for this legislation.

Another concern is with the design of the program on a case-by-case basis where donors and recipients are linked. It is our understanding that leave donors would be contributing to a particular recipient who qualifies under the guidelines. The actual mechanics of how this would occur are difficult to envision. Would the recipient be expected to solicit such leave from his friends or coworkers?

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[1] See p. 196 for Mr. Mulholland's prepared statement.

This could be a demeaning and embarrassing procedure. Would the agency publicize the employee's particular case and accept donations? This could be disturbing to the employee, especially in a sensitive illness such as AIDS.

Finally, we note that section 6339(a) allows for collective bargaining on the leave transfer program where organizations hold exclusive recognition. We encourage the Subcommittee, if it decides to pursue S. 1595, to include language which clarifies that all aspects of the program, including the decisionmaking process on an employee's eligibility to be a leave recipient, are subject to such negotiations.

While having the leave transfer program of S. 1595 in place would be a clear improvement over the status quo for those unfortunate to have such a medical emergency, such employees would still be faced with large uncertainties: for example, will enough coworkers contribute or when will the leave run out?

The approach envisioned in S. 2140 addresses most of these concerns. By establishing leave pools, donors and recipients are not directly linked. Problems of coercion and propriety are basically removed.

Also by establishing that to qualify as a leave recipient an employee must have also been a leave contributor, a strong incentive is created to establish sufficient donations to cover recipient needs. Given sufficient donations, recipients would be relieved of the uncertainty which we noted in S. 1595.

Given the general support for the approach taken by S. 2140, we offer the following areas that the Subcommittee may want to consider.

The Subcommittee may want to consider a Government-wide leave bank instead of agency-specific leave banks. A small agency which has a disproportionate leave share of leave recipients may find the hour standards of Section 6336 are insufficient to meet the agency's needs while another agency with few leave recipients may be able to sharply reduce the hour standards, thereby setting very different standards of leave recipient eligibility between agencies. A broad principle in insurance is to spread the risk as widely as possible. Following this principle in this case would argue for a Government-wide approach instead of an agency-specific approach. In addition, consolidating the administration costs provide some economies of scale to the program.

Care should be exercised so that employees do not become donors only when they are intending to be recipients. While the law clearly intends to establish this criterion, we are not sure if it is sufficient to avoid such adverse selection action.

But, basically, we would say that we think the idea is a very sound program, we think there has been a number of experiments in the Government; we think the labor unions have shown that they can deal with these programs; and we think the best arena from which to set them up, to administer them and to police them, is through the collective bargaining arrangement for those covered by exclusive recognitions.

Thank you.

Senator PRYOR. Mr. Mulholland, thank you. I apologize to you because I did not announce your title a moment ago—Director of

Field Services, American Federation of Government Employees. We are very appreciative of your contribution and participation this afternoon.

Mr. Robert Tobias, the president of the National Treasury Employees Union, is no stranger to this Subcommittee.

Mr. Tobias.

TESTIMONY OF ROBERT TOBIAS, PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION [1]

Mr. **Tobias**. Thank you very much, Mr. Chairman. I know this has been a long day for you, a busy morning as well as a busy afternoon.

Senator **Pryor**. It was a busy morning, and a pretty busy afternoon.

Mr. **Tobias**. Well, I appreciate being here. The current system of earning and using leave is not always adequate, as the Chairman knows, based on the fact that he has recognized the need and introduced this bill.

The concept of leave sharing is relatively new to the Federal Government, and the first Federal leave-sharing effort took place in 1986 when a private bill providing a program for NTE members Shannon and Joseph Chiles was enacted by Congress. Shannon Chiles had terminal cancer. A bill was introduced and passed, and employees donated 1,500 annual leave hours and 5,000 sick leave hours to the Chiles family.

Subsequent to that first bill, there were other private bills, some legislation introduced by Congressman Frank Wolf, and then the 1988 Continuing Resolution.

And now we have and are considering H.R. 3757, and, of course, your bill, S. 2140. The House legislation primarily provides for direct donations of leave from one employee to another, although it does provide for one agency to experiment with a leave bank.

There are definite merits to both approaches. A leave bank system eliminates the serious administrative problem of dealing with the restoration of unused donated leave. It also provides a degree of privacy for the leave recipient, which could be very important to some individuals who, for whatever reason, do not want their circumstances widely known.

On the other hand, one of the benefits of a direct donation approach is that some employees may be more inclined to donate leave for a person they know or a situation they are informed about rather than to a blind bank.

We feel that the best way to address this situation legislatively would be to authorize a program experimenting with both leave banks and direct donations for a period of five years.

The leave bank boards that S. 2140 would establish for each agency could determine which approach would be suitable for that agency. They could even decide that a leave bank would be the best system in one region or another subdivision of the agency and that a direct donation program would be more appropriate to another. Board members would have the working knowledge of the agency needed to determine which approach would best address the needs of the employees and be the most administratively feasible.

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[1] See p. 202 for Mr. Tobias' prepared statement.

It seems to us that this is the best way to actually find out which program would have the most long-term success.

We feel that the establishment of a long-term Government-wide leave sharing program is an idea that has come. Federal employees have demonstrated their desire to participate in such a program and help their colleagues. Leave sharing is a no-lose situation for the Government both financially and in terms of employee morale.

While we encourage changes to incorporate sick leave and to experiment with both leave banks and direct leave donations, NTEU wholeheartedly supports the Federal Employees Leave Bank Act of 1988. And we look forward, Mr. Chairman, very much to working with you and with the other Members of this Subcommittee in getting this legislation, this most-needed legislation, enacted.

Thank you very much.

Senator PRYOR. A very fine statement, Mr. Tobias. We appreciate you attending this afternoon and waiting until almost 4 o'clock to give your statement.

And now, certainly not least, but last on our program this afternoon is Beth Moten, legislative liaison, National Federation of Federal Employees. We look forward to your statement, Beth. Thank you.

TESTIMONY OF BETH MOTEN, LEGISLATIVE LIAISON, NATIONAL FEDERATION OF FEDERAL EMPLOYEES

Ms. MOTEN. Thank you, Mr. Chairman. In the interest of time I will make my remarks very brief.

Senator PRYOR. Your full statement [1] will be placed in the record. Thank you.

Ms. MOTEN. Thank you, Mr. Chairman. I'd like to associate my remarks with those of Mr. Mulholland and Mr. Tobias, and I would really like just to mention some areas of concern that we have. We do generally support the leave bank concept rather than the person-to-person transfer for reasons that have already been discussed at the hearing today, primarily the need for medical privacy of a lot of individuals.

We also have two suggestions for any legislation that is forthcoming from the Subcommittee. First, we believe it is critical that employees covered by a negotiated agreement be able to participate in a leave bank as soon as the enacting legislation is signed. To ensure the participation, we suggest that language be drafted so that the leave bank policy is considered a mandatory subject of bargaining. In this way local unions could bargain with management according to the specific needs of the work site, enabling all employees to participate in this benefit while preserving the preeminence of a negotiated agreement.

NFFE's second concern is that regulations concerning eligibility for the benefits of the leave bank be structured in such a way that favoritism would be impossible. Allowing the agency to consider the likely impact on morale and efficiency when reviewing a worker's request for leave needed for reasons other than the worker's own illness could possibly open the door for favoritism.

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[1] See p. 208.

That really completes my statement today, Mr. Chairman. I won't take up any more of your time.

Senator **Pryor**. I want to thank all of you for coming this afternoon. I think this has been a very constructive hearing. Probably most people in the Senate and in the House are not very sensitized nor do they know very much about what has gone on in the past with regard to the issue that we are addressing today. It is not only an issue to some degree of economics; as one witness has stated. It is an issue that relates to the humaneness of people-to-people and employee-to-employee. Now we are going to see exactly which way we should pursue these two measures in the Senate.

Finally, let me state that there may be a need to ask you some other questions—we may do this very informally—you've always been very cooperative; we may also ask our other witnesses some questions relative to this legislation.

I think, since the hearing has started this afternoon, maybe it's because of everyone's outstanding testimony, we now have four cosponsors of my legislation—Senator Inouye, Senator Sarbanes, Senator Sasser, and Senator Adams. We're proud to have their cosponsorship. We are also very appreciative of Senator Domenici's coming and leading off our discussion this afternoon. It's been very constructive and very educational for me.

Thank you, and the meeting is adjourned.

[The Subcommittee adjourned at 3:57 p.m.]

APPENDIX

100th CONGRESS
1st Session

S. 1595

To amend title 5, United States Code, to provide for the establishment of a voluntary leave transfer program for Federal employees, and for other purposes.

IN THE SENATE OF THE UNITED STATES

August 5, 1987

Mr. Dominici introduced the following bill; which was referred to the Committee on Governmental Affairs

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A BILL

To amend title 5, United States Code, to provide for the establishment of a voluntary leave transfer program for Federal employees, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Employees Leave Act of 1987".

SEC. 2. VOLUNTARY LEAVE TRANSFER PROGRAM.

(a) In General.—(1) Chapter 63 of title 5, United States Code, is amended by adding at the end the following:

"Subchapter III—Voluntary Leave Transfer Program

"§ 6331. Definitions

"For the purpose of this subchapter—

"(1) the term 'employee' means an employee as defined by section 6301(2);

"(2) the term 'personal emergency' means a medical or family emergency or other hardship situation that is likely to require an employee's absence from duty and to result in a loss of income to the employee because of the unavailability of paid leave;

"(3) the term 'leave recipient' means an employee whose application under section 6333 to receive donations of leave is approved;

"(4) the term 'leave donor' means an employee whose application under section 6334 to make donations of leave is approved; and

"(5) the term 'transferred leave' means annual leave transferred under this subchapter.

"§ 6332. General authority

"Notwithstanding any provision of subchapter I, and subject to the provisions of this subchapter, the Office of Personnel Management shall establish a program under which annual leave accrued or accumulated by an employee may be transferred to the annual leave account of any other employee if such other employee requires additional leave because of a personal emergency.

"§ 6333. Receipt and use of transferred leave

"(a) An application to receive donations of leave under this subchapter, whether submitted by or on behalf of an employee—

"(1) shall be submitted to the employing agency of the proposed leave recipient; and

"(2) shall include—

"(A) the name, position title, and grade or pay level of the proposed leave recipient;

"(B) a brief description of the nature, severity, and anticipated duration of the personal emergency involved; and

"(C) any other information which the employing agency may reasonably require.

"(b) A leave recipient may use annual leave transferred to the leave recipient's annual leave account under this subchapter in the same manner and for the same purposes as if such leave recipient had accrued that leave under section 6303, except that—

"(1) any annual leave and (if appropriate) any sick leave accrued, accumulated, or otherwise available to the leave recipient shall be used before any transferred leave may be used; and

"(2) unless the personal emergency involves a medical condition affecting the leave recipient, the employing agency may consider the likely impact on morale and efficiency within the agency in considering a leave recipient's request to use transferred leave.

"(c) Transferred leave—

"(1) may accumulate without regard to the limitation imposed by section 6304(a); and

"(2) may be substituted retroactively for periods of leave without pay or used to liquidate an indebtedness for advanced annual leave granted on or after a date fixed by the employee's employing agency as the beginning of the personal emergency involved.

"(d) Transferred leave remaining to the credit of a leave recipient when the leave recipient's employment terminates—

"(1) may not be transferred to another agency, except with the consent of such other agency;

"(2) may not be included in a lump-sum payment under section 5551 or 5552; and

"(3) shall not be available for recredit under section 6306 upon reemployment.

"§ 6334. Donations of annual leave

"(a) An employee may, by written application to such employee's employing agency, request that a specified number of hours be transferred from such employee's annual leave account to the annual leave account of a leave recipient.

"(b) Upon approving an application under subsection (a), the employing agency of the leave donor may transfer all or any part of the number of hours requested for transfer, except that the number of hours so transferred may not exceed—

"(1) the number of hours remaining in the leave year (as of the time of the transfer) for which the leave donor is scheduled to work and receive pay; or

"(2) one-half of the maximum number of hours of annual leave accruable by the leave donor during the leave year, except with the written approval of the leave donor's employing agency.

"(c) Regulations prescribed by the Office of Personnel Management under section 6341 shall include—

"(1) procedures to carry out this subchapter when the leave donor and the leave recipient are employed by different agencies; and

"(2) provisions under which appropriate adjustments shall be made when the leave donor and the leave recipient are under different leave systems.

"§ 6335. Termination of personal emergency

"(a) The personal emergency affecting a leave recipient shall, for purposes of this subchapter, be considered to have terminated as of the date on which—

"(1) the leave recipient's employing agency determines that the personal emergency no longer exists; or

"(2) the leave recipient's employment by the employing agency terminates.

"(b) A leave recipient's employing agency shall continuously monitor the status of the personal emergency affecting the leave recipient and, consistent with guidelines prescribed by the Office of Personnel Management, shall establish procedures to ensure that a leave recipient is not permitted to use or receive transferred leave after the personal emergency ceases to exist.

"§ 6336. Restoration of transferred leave

"(a) The Office of Personnel Management shall establish procedures under which any transferred leave remaining to the credit of a leave recipient when the personal emergency affecting the leave recipient terminates shall be restored on a prorated basis by transfer to the annual leave accounts of the respective leave donors.

"(b) Transferred leave restored to a leave donor under subsection (a) before the beginning of the third biweekly pay period before the end of a leave year shall be subject to the limitation imposed by section 6304(a).

"(c) Transferred leave restored to a leave donor under subsection (a) after the beginning of the third biweekly pay period before the end of a leave year shall not be subject to the limitation imposed by section 6304(a) until the end of the leave year following the leave year in which the transferred leave is restored.

"(d) The Office shall prescribe regulations under which this section shall be applied in the case of an employee who is paid other than on the basis of biweekly pay periods.

"(e) Restorations of leave under this section shall be carried out in a manner consistent with regulations under section 6334(c), if applicable.

"§ 6337. Prohibition of coercion

"(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right which such employee may have with respect to donating, receiving, or using annual leave under this subchapter.

"(b) For the purpose of subsection (a), the term 'intimidate, threaten, or coerce' includes promising to confer or conferrring any benefit (such as an appointment or promotion or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

"§ 6338. Inclusion of postal employees

"An individual employed by the United States Postal Service or the Postal Rate Commission shall be eligible to participate under this subchapter to the same extent and subject to the same conditions as in the case of an employee under section 6331(1).

"§ 6339. Negotiated contracts; exclusion authority

"(a) Employees within a unit with respect to which an organization of Government employees has been accorded exclusive recognition shall not be included under this subchapter except to the extent expressly provided under a written agreement between the agency and such organization.

"(b)(1) Upon written request by the head of an agency, the Office of Personnel Management may exclude that agency from this subchapter if the Office determines that inclusion under this subchapter is causing substantial disruption to agency functions.

"(2) Section 2(b)(2) of the Federal Employees Leave Act of 1987 shall apply with respect to any transferred leave remaining to the credit of an employee whose personal emergency has not terminated before that employee's employing agency is excluded pursuant to this subsection.

"§ 6340. Reporting requirements

"The Office of Personnel Management may require agencies to maintain records and provide pertinent information to the Office for purposes of any report which the Office may be required to prepare with respect to this subchapter.

"§ 6341. Regulations

"The Office of Personnel Management may prescribe regulations necessary for the administration of this subchapter.".

(2) The analysis for chapter 63 of title 5, United States Code, is amended by adding at the end the following:

"SUBCHAPTER III—VOLUNTARY LEAVE TRANSFER PROGRAM

"Sec.
"6331. Definitions.
"6332. General authority.
"6333. Receipt and use of transferred leave.
"6334. Donations of annual leave.
"6335. Termination of personal emergency.
"6336. Restoration of transferred leave.
"6337. Prohibition of coercion.
"6338. Inclusion of postal employees.
"6339. Negotiated contracts; exclusion authority.
"6340. Reporting requirements.
"6341. Regulations.".

(b) COMMENCEMENT AND TERMINATION OF PROGRAM; AUTHORITY TO USE RESIDUAL LEAVE REMAINING AFTER PROGRAM TERMINATES.—(1) The voluntary leave transfer program shall be implemented beginning not later than 4 months after the date of the enactment of this Act and shall terminate 5 years after its commencement date.

(2) If the voluntary leave transfer program terminates before the termination of the personal emergency affecting a leave recipient, any annual leave transferred to the annual leave account of the leave recipient before the termination of the program shall remain available for use (including by res-

toration to leave donors, if applicable) as if the program had remained in effect.

(c) REPORT.—The Office of Personnel Management shall submit a written report to the President and the Congress with respect to the operation of the voluntary leave transfer program not later than 6 months before the date on which the program is scheduled to be terminated.

SEC. 3. EXPERIMENTAL PROGRAMS INVOLVING ADDITIONAL LEAVE AS A MEANS OF RECOGNIZING OUTSTANDING PERFORMANCE BY FEDERAL EMPLOYEES.

(a) GENERAL GUIDELINES.—As soon as practicable after the date of the enactment of this Act, the Office of Personnel Management shall by regulation establish general guidelines in accordance with which agencies shall be permitted to conduct experimental programs to determine the desirability and feasibility of providing additional leave under subchapter I of chapter 63 of title 5, United States Code, as a means of recognizing outstanding performance or other achievements by Federal employees.

(b) SPECIFIC CONDITIONS.—(1) An experimental program—

(A) may be designed in such a way so that the additional leave could be used in lieu of, in addition to, or otherwise in conjunction with, any monetary award or other form of recognition otherwise available under existing provisions of law; but

(B) may not be implemented in the case of any particular employee except with the consent of the employee involved.

(2) Employees within a unit with respect to which an organization of Government employees has been accorded exclusive recognition may not be included in an experimental program except to the extent expressly provided under a written agreement between the agency and such organization.

(c) TECHNICAL ASSISTANCE.—The Office shall, upon request of an agency, provide technical assistance relating to the design or implementation of an experimental program under this section.

(d) INFORMATION TO OPM.—The Office may require agencies to maintain such records and to provide such information as the Office may require in order to prepare its report under subsection (e)(2).

(e) TERMINATION; REPORT; REMAINING LEAVE.—(1) All experimental programs under this section shall terminate not later than 5 years after the date of the enactment of this Act.

(2) Not later than 6 months after the termination of the experimental programs, the Office shall submit to the Presi-

dent and the Congress a report containing the Office's findings and conclusions with respect to each such program. Included as part of such report shall be recommendations for any administrative action or legislation which the Office considers appropriate.

(3) Any additional leave standing to the credit of an employee upon the termination of the experimental program under which such leave was granted shall remain available for use by such employee as if the program had remained in effect.

100TH CONGRESS
2D SESSION

S. 2140

To amend title 5, United States Code, to provide for the establishment of a voluntary leave bank program for Federal employees, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 4 (legislative day, MARCH 2), 1988

Mr. PRYOR introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

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A BILL

To amend title 5, United States Code, to provide for the establishment of a voluntary leave bank program for Federal employees, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Employees Leave Bank Act of 1988".

SEC. 2. VOLUNTARY LEAVE BANK PROGRAM.

(a) IN GENERAL.—(1) Chapter 63 of title 5, United States Code, is amended by adding at the end thereof the following new subchapter:

"Subchapter III—Voluntary Leave Bank Program

"§ 6331. Definitions

"For the purpose of this subchapter the term—

"(1) 'employee' means an employee as defined by section 6301(2), but shall not include any employee of the government of the District of Columbia;

"(2) 'leave bank' means the aggregate leave time contributed by leave contributors of an agency and established in a bank by such agency under section 6333;

"(3) 'leave contributor' means an employee who contributes leave to an agency leave bank under section 6335; and

"(4) 'leave recipient' means an employee whose application under section 6337 to receive contributions of leave from a leave bank is approved; and

"(5) 'medical emergency' means a medical condition of an employee or a family member of such employee that is likely to require the prolonged absence of such employee from duty and to result in a substantial loss of income to such employee because of the unavailability of paid leave.

“§ 6332. General authority

“Notwithstanding any provision of subchapter I, and subject to the provisions of this subchapter, the Office of Personnel Management shall establish a program under which—

“(1) annual leave accrued or accumulated by an employee may be contributed to a leave bank established by the employing agency of such employee; and

“(2) an employee experiencing a medical emergency may use leave from such a leave bank.

“§ 6333. Establishment of leave banks

“Each agency shall establish a leave bank or leave banks from annual leave contributed by employees under section 6335, in accordance with regulations prescribed by the Office of Personnel Management.

“§ 6334. Establishment of Leave Bank Boards

“(a) Each agency shall establish a Leave Bank Board consisting of 3 members, at least one of whom shall represent a labor organization or employee group, to administer the leave bank under the provisions of this subchapter, in consultation with the Office of Personnel Management.

“(b) Each such Board shall—

“(1) review and approve applications to the leave bank under section 6337;

“(2) monitor each case of a leave recipient; and

“(3) monitor the amount of leave in the leave bank and the number of applications for use of leave from the leave bank, and maintain an adequate amount of leave in the leave bank to the greatest extent practicable.

"§ 6335. Contributions of annual leave

"(a)(1) An employee may, by written application to the Leave Bank Board of the employing agency of such employee, request that a specified number of hours be transferred from the annual leave account of such employee to the leave bank established by such agency.

"(2) An employee may state a concern and desire to aid a specified proposed leave recipient or a leave recipient in the application filed under paragraph (1). The Leave Bank Board may use such statements in making determinations concerning—

"(A) the recognition of a medical emergency and the approval of an application for a leave recipient; and

"(B) the effects on morale within the employing agency in approving such applications.

"(b) Upon approving an application under subsection (a), the employing agency of the leave contributor may transfer all or any part of the number of hours requested for transfer, except that the number of hours so transferred may not exceed—

"(1) the number of hours remaining in the leave year (as of the time of the transfer) for which the leave contributor is scheduled to work and receive pay; or

"(2) one-half of the maximum number of hours of annual leave accruable by the leave contributor during the leave year, except with the written approval of the agency employing the leave contributor.

"§ 6336. Eligibility for leave recipients

"(a) An employee is eligible to be a leave recipient if such employee—

"(1) experiences a medical emergency and submits an application pursuant to section 6337(a); and

"(2)(A) contributes the minimum number of hours as required under subsection (b) of accrued or accumulated annual leave to the leave bank of the employing agency of such employee, in the calendar year (beginning in and including any part of a calendar year in which such leave bank is established) that such employee submits an application to be a leave recipient under section 6337(a); and

"(B) such contribution is made before such employee experiences the medical emergency.

"(b)(1) An employee shall contribute the minimum number of hours required under subsection (a)(2)(A), if such employee is an employee—

"(A) for less than 3 years of service and contributes a minimum of 4 hours;

"(B) for between 3 years and less than 15 years of service and contributes a minimum of 6 hours; or

"(C) for 15 years or more of service and contributes a minimum of 8 hours.

"(2) Notwithstanding the provisions of paragraph (1), the Leave Bank Board of an agency, after consultation with the Office of Personnel Management, may reduce the minimum number of hours required under paragraph (1) for any year, if such Board determines there is a surplus of leave in the leave bank.

"(c) An employee shall meet the requirements of subsection (a)(2)(A) if such employee—

"(1) is employed by more than one agency in any calendar year;

"(2) completes 1 year of Federal service; and

"(3) contributes the minimum number of hours as required under subsection (b) of accrued or accumulated annual leave to the leave bank of the agency with which such employee submits an application to be a leave recipient under section 6337(a).

"(d) The provisions of subsection (a) may not be construed to limit the amount of the voluntary contribution of annual leave to a leave bank, which does not exceed the limitations of section 6335(b).

"§ 6337. Receipt and use of leave from a leave bank

"(a) An application to receive contributions of leave from a leave bank, whether submitted by or on behalf of an employee—

"(1) shall be submitted to the Leave Bank Board of the employing agency of the proposed leave recipient; and

"(2) shall include—

"(A) the name, position title, and grade or pay level of the proposed leave recipient;

"(B) a brief written description by a physician of the nature, severity, and anticipated duration of the medical emergency involved; and

"(C) any other information which such Board may reasonably require to verify or substantiate the need for leave.

"(b) The Leave Bank Board of an employing agency may approve an application submitted under subsection (a).

"(c) A leave recipient may use annual leave transferred to the leave bank established by the employing agency of such employee under this subchapter in the same manner and for the same purposes as if such leave recipient had accrued that leave under section 6303, except that—

"(1) any annual leave and, if applicable, any sick leave accrued or accumulated to the leave recipient shall be used before any leave from the leave bank may be used; and

"(2) unless the medical emergency involves a medical condition affecting the leave recipient, the employing agency may consider the likely impact on morale and efficiency within the agency in considering the request of a leave recipient to use leave from the leave bank.

"(d) Leave used from the leave bank by a leave recipient may be substituted retroactively for periods of leave without pay or used to liquidate an indebtedness for advanced leave granted on or after a date fixed by the employing agency of the employee at the beginning of the medical emergency involved.

"(e) Notwithstanding the provisions of sections 6303 and 6307, during any period in which an employee is using leave received from a leave bank with respect to any medical emergency—

"(1) annual leave may not accrue under section 6303 in excess of 5 days; and

"(2) sick leave may not accrue under section 6307 in excess of 5 days.

"(f) Nothing in the provisions of section 7351 shall apply to any solicitation, contribution, or use of leave to or from a leave bank under this subchapter.

"(g) Leave approved for a leave recipient from a leave bank, which has not been used at the time when the employment of such leave recipient terminates may not be—

"(1) transferred to the leave bank of another agency, unless approved by both agencies;

"(2) included in a lump-sum payment under section 5551 or 5552; and

"(3) made available for recredit under section 6306 upon reemployment.

"§ 6338. Termination of medical emergency

"(a) The medical emergency affecting a leave recipient shall, for purposes of this subchapter, be considered to have terminated as of the date on which—

"(1) the Leave Bank Board of the employing agency of the leave recipient determines that the medical emergency no longer exists; or

"(2) the employment of the leave recipient by the employing agency terminates.

"(b) The Leave Bank Board of the employing agency of a leave recipient shall monitor the status of the medical emergency affecting the leave recipient and, consistent with guidelines prescribed by the Office of Personnel Management, shall establish procedures to ensure that a leave recipient is not permitted to use or receive leave from a leave bank after the medical emergency ceases to exist.

"§ 6339. Prohibition of coercion

"(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right which such employee may have with respect to contributing, receiving, or using annual leave under this subchapter.

"(b) For the purpose of subsection (a), the term 'intimidate, threaten, or coerce' includes promising to confer or conferring any benefit (such as an appointment, promotion, or compensation), or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

"(c) An employee who is intimidated, threatened, or coerced as prohibited under subsection (a) may allege a prohibited personnel practice under sections 2302(b) (10) and (11) of this title.".

(2) The table of sections for chapter 63 of title 5, United States Code, is amended by adding at the end thereof the following:

"SUBCHAPTER III—VOLUNTARY LEAVE BANK PROGRAM

"Sec.
"6331. Definitions.
"6332. General authority.

"6333. Establishment of leave banks.
"6334. Establishment of Leave Bank Boards.
"6335. Contributions of annual leave.
"6336. Eligibility for leave recipients.
"6337. Receipt and use of leave from a leave bank.
"6338. Termination of personal emergency.
"6339. Prohibition of coercion.".

(b) IMPLEMENTATION OF VOLUNTARY LEAVE BANK PROGRAM.—No later than 4 months after the date of the enactment of this Act—

(1) the head of each agency shall establish a leave bank under section 6333 of title 5, United States Code, and implement the regulations of the Office of Personnel Management prescribed pursuant to paragraph (2); and

(2) the Office of Personnel Management shall prescribe regulations to implement voluntary leave bank programs pursuant to the provisions of this Act.

(c) TERMINATION OF VOLUNTARY LEAVE BANK PROGRAM AFTER 5 YEARS.—(1) Subchapter III of chapter 63 of title 5, United States Code, is repealed effective 5 years after the date of enactment of this Act.

(2) The table of sections for subchapter III of chapter 63 of title 5, United States Code, is repealed effective 5 years after the date of enactment of this Act.

STATEMENT OF SENATOR PETE V. DOMENICI
SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
HEARING ON FEDERAL LEAVE SHARING
MARCH 18, 1988

MR. CHAIRMAN, I AM PLEASED TO HAVE THE OPPORTUNITY TO TESTIFY BEFORE THE COMMITTEE TODAY, AND I WANT TO THANK YOU PERSONALLY SO VERY MUCH FOR YOUR INTEREST IN THIS LEGISLATION.

IT IS NOT OFTEN THAT CONGRESS HAS THE OPPORTUNITY TO POTENTIALLY HELP SO MANY IN NEED, WITH SO LITTLE BURDEN TO THE TAXPAYER. BUT THAT IS EXACTLY THE OPPORTUNITY THAT MY BILL, S. 1595, AND CHAIRMAN PRYOR'S BILL, S. 2140, WOULD OFFER.

S. 1595 AND S. 2140 WOULD ESTABLISH A VOLUNTARY LEAVE SHARE PROGRAM AND A VOLUNTARY LEAVE BANK PROGRAM, RESPECTIVELY, FOR FEDERAL EMPLOYEES WHO NEED LEAVE FOR MAJOR MEDICAL OR FAMILY EMERGENCIES.

UNDER THE LEAVE SHARE PROVISIONS OF S. 1595, AN EMPLOYEE WOULD DONATE ANNUAL LEAVE TO AN INDIVIDUAL COLLEAGUE. CHAIRMAN PRYOR'S S. 2140 WOULD ESTABLISH LEAVE BANKS AT EVERY AGENCY, AND EMPLOYEES WOULD CONTRIBUTE THEIR ANNUAL LEAVE TO THE BANK.

BY DONATING UNUSED ANNUAL LEAVE TO THEIR FELLOW EMPLOYEES, LEAVE SHARING WOULD PROVIDE EMPLOYEES THE OPPORTUNITY TO PERSONALLY ASSIST A COWORKER IN NEED.

THE NEED FOR LEGISLATION WAS FIRST BROUGHT TO MY ATTENTION BY ONE OF MY CONSTITUENTS, GERALDINE GRENKO. MS. GRENKO WAS A CAREER FEDERAL EMPLOYEE WITH THE BUREAU OF INDIAN AFFAIRS IN NEW MEXICO. FIVE YEARS AGO, SHE DEVELOPED CANCER. WHILE SHE BEAT THAT CANCER, SHE LEARNED IN 1986 THAT SHE HAD DEVELOPED A SECOND FORM OF CANCER.

WHEN GERALDINE RECEIVED MEDICAL TREATMENTS DURING HER FIRST BOUT WITH CANCER, SHE WAS ABLE TO REMAIN IN HER JOB. UNFORTUNATELY, SHE HAD TO RETIRE WHEN SHE LEARNED OF THE SECOND CANCER.

WHY? BECAUSE SHE DID NOT HAVE SUFFICIENT MEDICAL LEAVE.

SEVERAL MONTHS AGO, GERALDINE PASSED AWAY. BUT BEFORE SHE DIED, SHE CONTACTED ME AGAIN. SHE TOLD ME SHE HAD RETIRED, BUT THAT IF A FEDERAL LEAVE SHARING ACT HAD BEEN IN PLACE, SHE MAY HAVE BEEN ABLE TO WORK FOR A LONGER TIME. GERALDINE EXPLAINED THAT MY LEGISLATION WAS TOO LATE TO HELP HER, BUT SHE URGED ME TO CONTINUE TO PUSH FOR ITS ENACTMENT IN ORDER TO ASSIST OTHER NEEDY INDIVIDUALS.

I AM PLEASED THAT THE ADMINISTRATION HAS TAKEN AN ACTIVE INTEREST IN MY LEAVE SHARE LEGISLATION. IT IS IMPORTANT TO GET THIS BILL ENACTED DURING THIS SESSION OF CONGRESS. THE ADMINISTRATION HAS INDICATED IT WOULD SUPPORT S. 1595, WITH SEVERAL AMENDMENTS.

FROM THE DONOR'S VIEWPOINT, THE LEAVE SHARE CONCEPT IS PREFERABLE TO THE LEAVE BANK CONCEPT, I BELIEVE. UNDER THE LEAVE SHARE PROVISIONS IN MY BILL, S. 1595, AN EMPLOYEE IS FAR MORE LIKELY TO PARTICIPATE IN THE VOLUNTARY PROGRAM THAN UNDER THE PROVISIONS OF A LEAVE BANK. A PERSON IS MORE LIKELY TO DONATE LEAVE TO HIS OR HER COLLEAGUE IF HE OR SHE PERSONALLY KNOWS OR KNOWS OF THE COLLEAGUE IN NEED.

THIS CONCEPT WILL BOOST EMPLOYEE MORALE, SINCE THE DONOR WILL SEE THE POSITIVE RESULTS OF LEAVE SHARING.

ADDITIONALLY, UNDER A LEAVE SHARE PROGRAM, AGENCY OFFICIALS WOULD NOT HAVE TO CHOOSE HOW TO ALLOCATE THE LEAVE IN A LEAVE BANK. THE RECIPIENT WOULD NOT HAVE TO BE CONCERNED WITH FAVORITISM ON THE PART OF THE PERSON WHO ALLOCATES THE LEAVE.

A LEAVE BANK PROGRAM MAY ALSO CREATE THE SITUATION WHERE AN EMPLOYEE WHO NEEDS LEAVE TOWARDS THE END OF A YEAR MAY NOT BE ABLE TO OBTAIN ALL OF THE LEAVE REQUIRED, BECAUSE THE DONATED LEAVE IN THE BANK HAS BEEN EXHAUSTED THROUGHOUT THE YEAR.

UNDER THE LEAVE SHARE APPROACH OF MY BILL -- AND THIS IS VERY IMPORTANT -- EMPLOYEES COULD DONATE WHATEVER AMOUNT OF LEAVE IS NECESSARY FOR THE RECIPIENT.

IT HAS ALSO BEEN SUGGESTED THAT A LEAVE BANK WOULD PROTECT THE RECIPIENT'S PRIVACY, BECAUSE FELLOW EMPLOYEES WOULD NOT KNOW OF A COLLEAGUE'S EMERGENCY.

I DO NOT BELIEVE THIS WOULD NECESSARILY BE A PROBLEM. WHETHER A RECIPIENT TAKES AN EXTENDED LEAVE FROM EITHER A LEAVE BANK OR A LEAVE SHARE PROGRAM, HIS OR HER COLLEAGUES WILL KNOW IT IS FOR A MEDICAL OR FAMILY EMERGENCY. UNDER EITHER FORMAT, THE RECIPIENT WOULD NOT BE REQUIRED TO DIVULGE THE NATURE OF THE EMERGENCY TO THE FELLOW EMPLOYEES.

THE DEMONSTRATION LEAVE SHARE PROJECTS AUTHORIZED IN THE CONTINUING RESOLUTION FOR FISCAL YEAR 1987 WERE A SUCCESS.

IN ONE OF THE THREE PILOT PROJECTS, MS. FREDA SOUTH AT THE DEPARTMENT OF ENERGY HAS RETURNED TO WORK ON A PART-TIME BASIS. MORE THANK 2,000 EMPLOYEES CONTRIBUTED LEAVE TO MS. SOUTH. MRS. KAREN SEFTON HAS RETURNED TO HER JOB AT THE DEPARTMENT OF THE ARMY, AFTER NEARLY 3,000 HOURS OF ANNUAL LEAVE WAS DONATED BY 195 EMPLOYEES, IN ORDER THAT MRS. SEFTON COULD CARE FOR HER TERMINALLY ILL DAUGHTER. IN THE THIRD DEMONSTRATION PROJECT, ALMOST 300 INTERNAL REVENUE SERVICE EMPLOYEES DONATED LEAVE TO MR. WILLIAM AULT, WHO HAS SINCE DIED.

IN SPITE OF THE DIFFERENT APPROACHES OF S. 1595 AND S. 2140, THE GOAL IS IDENTICAL -- TO HELP A FELLOW WORKER IN NEED. I AM CONFIDENT THAT THE COMMITTEE AND THE ADMINISTRATION CAN WORK TOGETHER TO REPORT A BILL. CHAIRMAN PRYOR'S FLEXIBILITY IS EVIDENT IN THE FACT THAT, AT THE REQUEST OF THE ADMINISTRATION, HE DID NOT INCLUDE SICK LEAVE IN HIS LEGISLATION. I COMMEND SENATOR PRYOR FOR HIS COOPERATION IN THIS REGARD.

IN CLOSING, LET ME REMIND MY COLLEAGUES OF THE IMPORTANCE OF GETTING A BILL THIS YEAR. THE FEDERAL WORK FORCE IS EXCITED ABOUT

THIS PROPOSAL. THIS IS EVIDENT FROM THE CALLS AND LETTERS I RECEIVE, AND FROM THE LEVEL OF PARTICIPATION IN THE ONGOING DEMONSTRATION PROJECTS.

TOGETHER, I AM CONFIDENT WE CAN REACH AN AGREEMENT THAT WOULD SATISFY ALL INTERESTED PARTIES.

THANK YOU.

Statement of

Michael P. Dolan
Assistant Commissioner
(Human Resources Management and Support)

Before the

Subcommittee on Federal Services,
Post Office, and Civil Service
Senate Committee on Government Affairs

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on

IRS' Experience with Leave Sharing

March 18, 1988

STATEMENT OF
MICHAEL P. DOLAN
ASSISTANT COMMISSIONER (HUMAN RESOURCES MANAGEMENT AND SUPPORT)
INTERNAL REVENUE SERVICE
BEFORE THE
SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE, AND CIVIL SERVICE
SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
MARCH 18, 1988

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I AM PLEASED TO BE HERE TODAY ON BEHALF OF THE COMMISSIONER TO DESCRIBE IRS' RECENT EXPERIENCES WITH LEAVE SHARING. IN MY TESTIMONY, I WILL SUMMARIZE OUR EXPERIENCES IN A RECENT LEAVE SHARING CASE IN CINCINNATI, OHIO. I WILL ALSO BRIEFLY DISCUSS HOW THIS CASE AND OTHERS LIKE IT IN FT. LAUDERDALE, FLORIDA, AND AUSTIN, TEXAS, REFLECT IRS' COMMITMENT TO A STRATEGIC PLAN INITIATIVE TO ENHANCE RECRUIMENT AND RETENTION OF EMPLOYEES, AND WILL ATTEMPT TO RECOUNT THE LESSONS WE'VE LEARNED FROM THESE CASES.

WITH ME TODAY IS PETER K. SCOTT, THE DEPUTY CHIEF COUNSEL, WHO WILL BE AVAILABLE TO HELP ANSWER ANY QUESTIONS YOU MAY HAVE ON THE TAX IMPLICATIONS OF LEAVE SHARING AND LEAVE BANK PROGRAMS.

I WOULD BE PLEASED TO TRY AND RESPOND TO YOUR OTHER QUESTIONS AT THE CONCLUSION OF MY TESTIMONY.

IMPLEMENTING AN EXPANDED LEAVE SHARING PROGRAM IN IRS

MR. CHAIRMAN, BEFORE GOING INTO THE DETAILS OF MY TESTIMONY TODAY, I'D LIKE TO BRIEFLY RECAP FOR YOU THE ACTIONS IRS HAS TAKEN AS A PARTICIPANT IN THE EXPANDED GOVERNMENT-WIDE LEAVE SHARING PROGRAM AUTHORIZED BY CONGRESS IN THE FY1988 CONTINUING RESOLUTION (P.L. 100-202), WHICH WAS ENACTED INTO LAW IN DECEMBER, 1987.

IN JANUARY, 1988, WE ALERTED ALL IRS PERSONNEL OFFICERS TO THE NEWLY-EXPANDED PROGRAM AND PROMISED THEM ADDITIONAL INFORMATION AS SOON AS THE OFFICE OF PERSONNEL MANAGEMENT'S (OPM) REGULATIONS WERE ISSUED. THOSE REGULATIONS WERE ISSUED ON MARCH 8, AND ARE NOW AVAILABLE TO OUR PERSONNEL OFFICERS. WE HAVE ALREADY PREPARED OUR OWN INTERNAL PROCEDURES TO IMPLEMENT THE OPM REGULATIONS, AND HAVE SHARED THESE PROCEDURES WITH THE NATIONAL TREASURY EMPLOYEES' UNION (NTEU) FOR THEIR REVIEW AND COMMENTS. THESE PROCEDURES WILL BE ISSUED TO OUR PERSONNEL OFFICERS FOR IMPLEMENTATION ONCE THEY HAVE BEEN REVIEWED BY THE TREASURY DEPARTMENT. ADDITIONALLY, WE HAVE ASKED OUR FIELD OFFICES FOR AN INFORMAL, UNOFFICIAL HEADCOUNT ON THE NUMBER OF EMPLOYEES WHO ARE INTERESTED IN AND ELIGIBLE FOR LEAVE SHARING UNDER THE EXPANDED OPM GUIDELINES. THEIR RESPONSES INDICATE THAT WE HAVE AT LEAST 215 EMPLOYEES SERVICEWIDE IN THIS CATEGORY AT THIS TIME.

WE BELIEVE THESE ACTIONS ARE EVIDENCE OF OUR CONTINUED INTEREST IN LEAVE SHARING, AND CONFIRM OUR COMMITMENT TO ASSIST OUR EMPLOYEES IN THEIR TIME OF NEED BY USING THE PROGRAM TO ITS FULLEST. TO THE EXTENT WE CAN, WE WANT IRS TO BE A MODEL LEAVE SHARING PROGRAM FOR THE FEDERAL GOVERNMENT, AND WE HAVE THE COMMISSIONER'S FULL SUPPORT IN THIS EFFORT.

BACKGROUND

AS YOU ARE WELL AWARE, MR. CHAIRMAN, THE INTERNAL REVENUE SERVICE TODAY IS A DECENTRALIZED ORGANIZATION OF OVER 112,000 EMPLOYEES AND AN ANNUAL BUDGET OF NEARLY $5.1 BILLION. OUR BASIC MISSION IS TO COLLECT THE REVENUE NECESSARY TO KEEP THE GOVERNMENT IN OPERATION, AND TO DO IT IN WAYS THAT WARRANT THE HIGHEST DEGREE OF PUBLIC CONFIDENCE IN THE SYSTEM AND THE SERVICE. WE RECOGNIZE THAT OUR EMPLOYEES ARE OUR GREATEST ASSET, WITHOUT WHOM WE COULD NOT ACCOMPLISH OUR MISSION. FOR THAT REASON, WE ARE CONSTANTLY LOOKING FOR WAYS TO IMPROVE BOTH THE WORKING CONDITIONS AND PRODUCTIVITY OF OUR WORKFORCE. IN MY CAPACITY AS THE ASSISTANT COMMISSIONER (HUMAN RESOURCES MANAGEMENT AND SUPPORT), I MANAGE THE OFFICE RESPONSIBLE FOR IMPLEMENTING SERVICE POLICY AFFECTING OUR EMPLOYEES.

THE STRATEGIC PLANNING PROCESS

LONG-RANGE PLANNING HAS BEEN AN ESTABLISHED PART OF IRS' MANAGEMENT AND BUDGET PROCESSESS SINCE THE EARLY 1950'S. BY 1983, HOWEVER, THE SERVICE HAD EVOLVED TO THE POINT WHERE MORE STRATEGIC GUIDANCE AND DIRECTION -- THAT TOOK INTO ACCOUNT THE IMPACT OF A CHANGING ENVIRONMENT ON THE SERVICE -- WERE REQUIRED FOR EFFECTIVE MANAGEMENT AND CONTROL OF THE ORGANIZATION. AFTER DELIBERATIONS ON THE MOST APPROPRIATE FORM FOR THIS GUIDANCE, IRS IN MAY 1984 ISSUED A STRATEGIC PLAN DESIGNED TO PROVIDE A FOUNDATION FOR TAX ADMINISTRATION PROGRAMS FOR THE 1980'S AND INTO THE NEXT CENTURY. THE PLAN WAS DIVIDED INTO FOUR MAJOR "AREAS OF CONCERN" (BALANCING EFFICIENCY AND EFFECTIVENESS, STRENGTHENING VOLUNTARY COMPLIANCE, ENCHANCING RECRUITMENT AND RETENTION OF EMPLOYEES, AND DEVELOPING AN INFORMATION MANAGEMENT STRATEGY), EACH OF WHICH WAS TO BE IMPLEMENTED THROUGH A SERIES OF SPECIFIC STRATEGIC INITIATIVES.

INCLUSION OF THE ENHANCING RECRUITMENT AND RETENTION ISSUE AS A MAJOR AREA OF THE PLAN WAS NOT AN ACCIDENT. THE SERVICE KNEW THAT AS AN EMPLOYER, WE WOULD HAVE TO COMPETE FOR THE BEST EMPLOYEES WITH OTHER FEDERAL AGENCIES AND THE PRIVATE SECTOR. WE BELIEVE OUR RECENT ACCOMPLISHMENTS IN ESTABLISHING FITNESS CENTERS, CHILD CARE FACILITIES, AND CONTINUING PROFESSIONAL EDUCATION FOR MANAGERS ARE INDICATIVE OF OUR COMMITMENT TO OUR EMPLOYEES. OUR EXPERIENCE TO DATE WITH LEAVE SHARING, WHILE RELATIVELY LIMITED, MAY BE THE MOST EXTENSIVE IN THE FEDERAL COMMUNITY, AND IS THE REASON I AM HERE TODAY TO DISCUSS THAT SUBJECT WITH YOU.

THE WILLIAM AULT CASE

YOUR LETTER TO COMMISSIONER GIBBS OF FEBRUARY 24 POSED FOUR QUESTIONS ON THE CASE OF BILL AULT, A FORMER REVENUE AGENT IN THE IRS CINCINNATI, OHIO, DISTRICT OFFICE. BILL WAS ONE OF ONLY THREE FEDERAL EMPLOYEES SELECTED BY THE OFFICE OF PERSONNEL MANAGEMENT (OPM) IN JUNE OF 1987 TO PARTICIPATE IN THE GOVERNMENT-WIDE LEAVE SHARING PILOT PROGRAM, AND WAS FEATURED IN TIME MAGAZINE'S AUGUST 17, 1987 ISSUE IN AN ARTICLE ENTITLED "EMPLOYEE BENEFITS: GIVING A BUDDY YOUR BREAK."

UNFORTUNATELY, BILL'S LONG BATTLE WITH LEUKEMIA WAS NOT SUCCESSFUL, AND HE PASSED AWAY ON DECEMBER 29, 1987. HIS DEATH WAS A GREAT LOSS TO HIS FAMILY AND TO THE INTERNAL REVENUE SERVICE, BUT THROUGH LEAVE SHARING WE HAD THE SATISFACTION OF KNOWING WE HAD HELPED RELIEVE SOME OF THE FINANCIAL BURDEN THEY WOULD OTHERWISE HAVE SUFFERED.

LET ME NOW RESPOND TO YOUR FOUR QUESTIONS ON BILL'S CASE AS DIRECTLY AND SUCCINTLY AS POSSIBLE.

1. THE SYSTEM USED TO RECORD LEAVE DONATIONS

THE CINCINNATI DISTRICT OFFICE WAS NOTIFIED ON JUNE 15, 1987, THAT MR. AULT HAD BEEN SELECTED BY OPM FOR PARTICIPATION IN THE LEAVE-SHARING PILOT PROGRAM. NO OFFICE COULD HAVE BEEN BETTER PREPARED OR RESPONDED MORE EXPEDITIOUSLY THAN THE CINCINNATI DISTRICT OFFICE, WHERE THE EXIGENCIES OF MR. AULT'S HEALTH CONDITION HAD ALREADY PROMPTED HIS FELLOW WORKERS TO ESTABLISH A VOLUNTARY "BILL AULT FUND" IN ORDER TO PROVIDE HIM WITH FINANCIAL ASSISTANCE. THIS EFFORT GREATLY AIDED IMPLEMENTATION OF THE OPM PROGRAM, AND PROVIDED AN IMMEDIATE SOURCE OF LEAVE FOR MR. AULT. AT THE TIME HE WAS SELECTED FOR PARTICIPATION IN THE PILOT, BILL WAS APPROACHING THE LEGAL LIMIT ON ADVANCED LEAVE AVAILABLE TO HIM.

AS SOON AS BILL WAS SELECTED FOR PARTICIPATION IN THE PILOT PROGRAM, A MEMORANDUM WAS ISSUED TO ALL DISTRICT OFFICE EMPLOYEES REMINDING THEM OF HIS CIRCUMSTANCES AND NOTING THAT THEY COULD DONATE LEAVE TO HIM IF THEY SO CHOSE UNDER THE LEAVE TRANSFER PILOT PROGRAM.

A COPY OF THE MEMORANDUM IS ATTACHED. THOSE EMPLOYEES WHO CHOSE TO DONATE LEAVE WERE ASKED TO COMPLETE THE BOTTOM PORTION OF THE MEMORANDUM (A LEAVE TRANSFER FORM), INDICATING THE TYPE AND AMOUNT OF LEAVE THEY WISHED TO DONATE TO MR. AULT'S LEAVE ACCOUNTS, AND TO RETURN IT TO THE DISTRICT PERSONNEL OFFICE.

USING THESE FORMS, THE DISTRICT PERSONNEL OFFICE RECORDED THE INDIVIDUAL LEAVE DONATIONS ON A "TEMPORARY LEAVE TRANSFER LOG" (COPY ATTACHED), DOCUMENTING THE FOLLOWING:

1. CONTROL NUMBER (FOR EACH LEAVE DONATION)
2. DATE OF DONATION
3. DONOR'S NAME
4. DONOR'S EMPLOYING OFFICE
5. DONOR'S GRADE AND STEP
6. DONOR'S HOURLY RATE OF PAY
7. NUMBER OF HOURS OF SICK LEAVE DONATED
8. NUMBER OF HOURS OF ANNUAL LEAVE DONATED
9. DATE LEAVE TRANSFER AUTHORIZATIONS WERE FORWARDED TO THE IRS DATA CENTER (PAYROLL OFFICE) IN DETROIT, MICHIGAN FOR PROCESSING
10. PERTINENT REMARKS

UPON COMPLETION OF THIS LOG, THE LEAVE TRANSFER FORMS WERE FORWARDED TO THE IRS DATA CENTER IN DETROIT. ADJUSTMENT RECORDS WERE THEN MANUALLY PREPARED AND ENTERED INTO THE PAYROLL SYSTEM. OBVIOUSLY, EACH LEAVE DONATION GENERATED TWO ADJUSTMENT ACTIONS: A MINUS ADJUSTMENT TO THE ACCOUNT OF THE DONOR AND A PLUS ADJUSTMENT TO THE ACCOUNT OF BILL AULT.

OVERALL, 293 DISTRICT OFFICE EMPLOYEES DONATED 6,217 HOURS OF SICK LEAVE AND 595 HOURS OF ANNUAL LEAVE TO BILL, FOR A TOTAL OF 6,812 HOURS. THIS IS AN AVERAGE CONTRIBUTION OF 23 HOURS OF DONATED LEAVE PER EMPLOYEE. THIS TREMENDOUS RESPONSE PROVIDED BILL WITH THE EQUIVALENT OF OVER THREE YEARS OF LEAVE.

UNDER THE GUIDELINES OF THE OPM PILOT PROGRAM, THE DONATED LEAVE WAS USED TO (1) LIQUIDATE ANY LEAVE-INDEBTEDNESS FOR ADVANCED LEAVE; (2) LIQUIDATE THE OUTSTANDING BALANCE OF LEAVE-WITHOUT-PAY RESULTING FROM HIS ILLNESS AND (3) MEET HIS NEED FOR LEAVE WHILE RECEIVING MEDICAL TREATMENT FOR HIS CONDITION.

2. THE PROCEDURE USED TO RESTORE UNUSED LEAVE TO DONORS ON A PRO-RATA BASIS

BY USING THE DONATED LEAVE AS NOTED ABOVE, SOME 1,700 HOURS OF LEAVE WERE USED. UNDER OPM GUIDELINES, THE LEAVE REMAINING IN THE ACCOUNT OF A LEAVE RECIPIENT UPON DEATH OR PROGRAM TERMINATION MUST BE RESTORED TO THE INDIVIDUAL LEAVE ACCOUNTS OF EACH DONOR. THE GUIDELINES ALSO REQUIRE RESTORATION ON A PRO-RATA BASIS, WHICH IN THIS CASE MEANS MANUAL ADJUSTMENTS TO EMPLOYEE LEAVE ACCOUNTS AT THE DETROIT DATA CENTER FOR EACH OF THE 293 INDIVIDUAL DONORS.

OUR PROCEDURES FOR PRO-RATA LEAVE RESTORATION ARE AS FOLLOWS:

- FOR EACH CATEGORY OF LEAVE (SICK AND ANNUAL), DIVIDE THE "TOTAL OF UNUSED LEAVE" BY THE "TOTAL OF LEAVE DONATED"
- THE RESULTING NUMBER PROVIDES A FACTOR TO BE APPLIED TO EACH OF THE 293 INDIVIDUAL DONORS. (EXAMPLE: IF THE DONOR DONATED 10 HOURS OF SICK LEAVE AND THE FACTOR IS 0.60, THE LEAVE DONOR WOULD HAVE 6 HOURS OF SICK LEAVE RESTORED TO HIS/HER LEAVE ACCOUNT.)
- THIS PROCESS IS TO BE APPLIED TO EACH INDIVIDUAL DONATION OF LEAVE. IT WILL RESULT IN A MINUS ADJUSTMENT TO MR. AULT'S ACCOUNT AND A PLUS ADJUSTMENT TO THE ACCOUNT OF EACH DONOR, IN ESSENCE A REVERSAL OF THE ORIGINAL LEAVE TRANSFER PROCEDURES DESCRIBED EARLIER.

THE LEAVE RESTORATIONS WILL BE COMPLETED AFTER A DETAILED REVIEW OF PERTINENT TIME AND ATTENDANCE RECORDS AND LEAVE-DONOR ADJUSTMENT RECORDS, IN ORDER TO ENSURE ACCURACY OF INDIVIDUAL LEAVE RESTORATIONS. MR. AULT'S LEAVE RECORDS ARE NOW BEING REVIEWED TO ENSURE THAT THE AMOUNT OF LEAVE TO BE RESTORED TO EACH DONOR IS CORRECT. ACCOUNTING CONTROLS ARE ALSO BEING REVIEWED TO DETERMINE THE IMPACT OF "ROUNDING DOWN" THE RESTORATION FIGURES WHEN THE MULTIPLICATION FACTOR NOTED ABOVE RESULTS IN A PARTIAL HOUR. WE EXPECT THAT THE INDIVIDUAL LEAVE ACCOUNT REVIEWS WILL BE COMPLETED ON OR BEFORE APRIL 8, 1988. AT THAT TIME, ADJUSTMENTS WILL BE MADE TO THE INDIVIDUAL LEAVE ACCOUNTS OF LEAVE DONORS.

3. The administrative costs of the Ault case

Our best estimates of these costs are as follows:

o	National Office coordination and agency procedure development	$1,956.00	$1,956.00
o	Cincinnati District Office		
	Administrative	$1,061.00	
	Clerical	568.00	
		$1,629.00	$1,629.00
o	IRS Data Center (Detroit)		
	Administrative	477.00	
	Clerical (adjustment processing)	641.00	
		$1,118.00	$1,118.00
o	Estimated Pro Rata Restoration Costs		
	Administrative	$177.00	
	Clerical (adjustment processing)	383.00	
		$560.00	$560.00
		Total	$5,263.00

At this point, Mr. Chairman, it is difficult to tell if this cost is high, low, or average; there Is simply not enough operational experience with leave sharing cases yet. We believe that the costs noted here are probably relatively high because the program was new and procedures had to be developed for it. Subsequent cases should be less expensive, reflecting our experience and some economies of scale.

4. Any knowledge of problems of employee coercion

We have absolutely no evidence of any coercion involved with this case. Quite the countrary is true, as employees seemed eager to voluntarily contribute their leave to this worthy cause.

OTHER IRS LEAVE SHARING CASES

AS I MENTIONED EARLIER AND AS I'M SURE YOU'RE AWARE, THE SERVICE HAS BEEN INVOLVED IN TWO OTHER LEAVE SHARING EXPERIENCES THAT WERE AND ARE NOT A PART OF THE OPM PILOT PROGRAM. BOTH THESE CASES WERE AUTHORIZED BY SPECIFIC LEGISLATION.

IN OCTOBER OF 1986, P.L. 99-500, "CONTINUING APPROPRIATIONS FOR FISCAL YEAR 1987", INCLUDED AUTHORIZATION FOR A LEAVE SHARING PROGRAM IN IRS' FT. LAUDERDALE, FLORIDA DISTRICT. THE CASE OF JOE AND SHANNON CHILES IS PERHAPS TOLD BEST IN THE FALL 1987 EDITION OF "IRS SERVICE" THAT WAS PROVIDED TO YOUR STAFF RECENTLY. A COPY OF COMMISSIONER GIBBS' LETTER TO JOE CHILES WAS ALSO INCLUDED FOR YOUR INFORMATION. I SHOULD NOTE THAT THE NATIONAL TREASURY EMPLOYEES UNION PLAYED A MAJOR ROLE IN THE SUCCESS OF THE CHILES CASE.

IN DECEMBER OF 1987, A PRIVATE RELIEF BILL (H.R. 3319, ENACTED AS PRIVATE LAW 100-6) SPONSORED BY CONGRESSMAN PICKLE OF TEXAS AUTHORIZED A LEAVE SHARING PROGRAM FOR SUSAN SAMPECK OF IRS' AUSTIN, TEXAS DISTRICT.

IN BOTH THESE CASES, THE ADMINISTRATIVE PROCEDURES BEING USED ARE ESSENTIALLY IDENTICAL TO THOSE USED IN BILL AULT'S CASE IN CINCINNATI. COST FIGURES ARE NOT YET AVAILABLE FOR EITHER CASE.

Summary

From the cases I've discussed here today, I believe our biggest lesson has been that IRS employees are incredibly caring and generous toward their co-workers. The depth of feeling for those stricken and the resultant outpouring of emotion and help (financial, professional, and personal) have been truly impressive. I'm proud to be associated with this agency and its employees.

On a more operational level, I don't feel we have enough experience yet to fully assess the costs associated with these programs. I believe the relatively small cost of Bill Ault's case was worth it. I further believe that the Ault case was a real catalyst for good in the Cincinnati District, because it provided a boost to both employee morale and productivity. Our employees there were given a way to show they cared, and they responded in ways that provided organizational and personal benefits far in excess of the program's costs.

Finally, I believe leave sharing will be more successful if individual agencies are given the necessary administrative flexibility in establishing and operating the program, to compensate for the wide variety of missions, locations, and workforces involved.

Conclusion

This concludes my prepared statement. Mr. Scott and I would be pleased to try and answer any questions that you or the other Members may have, Mr. Chairman.

memorandum

date

to: All Employees
Cincinnati District

from: Director D
Cincinnati District

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subject: Temporary Leave Transfer Program
Transfer of Annual and Sick Leave to William Ault

One of our fellow employees, William Ault, was recently selected as one of three employees nationwide, to participate in a temporary leave transfer program for individuals who are experiencing a personal emergency.

Bill is an Internal Revenue Agent in our Cincinnati post-of-duty and has been battling acute myelocyte leukemia for the past two years. This battle has caused him to use all of his annual and sick leave as well as advanced leave and a large amount of leave without pay (LWOP). Bill has under gone extended treatment and is presently being treated in the hospital. The outlook is that he will continue to need additional treatment.

As part of the temporary leave transfer program authorized by Public Laws 99-500 and 99-591 and Executive Order 12589, employees may donate to Bill unused accrued annual and sick leave. This donation of leave will be transferred from the accounts of leave donors to Bill's leave accounts and will be used for current charges of annual and sick leave, to liquidate advance leave indebtedness, and substituted retroactively for periods of LWOP.

The donation of leave to Bill is entirely voluntary. If you are interested in donating annual or sick leave, you are asked to complete the information below and return to the district Personnel Branch.

Harold M. Browning

TRANSFER OF ANNUAL AND/OR SICK LEAVE TO WILLIAM AULT

I request that my accrued annual and/or sick leave be transferred in the amount indicated below to the leave accounts of William Ault:

_____ Hours of my annual leave   _____ Hours of my sick leave

I have sufficient leave in my leave accounts to cover this donation.

Requested by (Signature)__________________________Date__________________

Name:__________________________________Division:____________________

POD:__________________________________Supervisor's Initial____________

Exhibit 2

Forward to:
INTERNAL REVENUE SERVICE
Chief, Office of Personnel/Payroll
Data and Automation Systems
Attn: Andy Anderson, PM:HR:H:S
1111 Constitution Ave., N. W.
Washington, D. C. 20224

TEMPORARY LEAVE TRANSFER PROGRAM

Recipient: Mr. William Ault

Temporary Leave Transfer Program Worksheet/Log

(1) Authorization Control Number *	(2) Date	(3) Employee Name	(4) Employing Office	(5) Grade/ Step	(6) Hourly Rate	(7) Sick Leave Donated	(8) Annual Leave Donated	(9) Forwarded to D. Cntr. (date)	(10) Remarks **

* Assign a Control Number to each Leave Transfer Authorization reveived.

** For Column (9) or Leave Authorizations forwarded to the Data Center, indicate (1) the amount of annual leave that otherwise would be subject to forfieture under section 6304 of Title 5, USC; and/or (2) the amount of sick leave that otherwise would be lost because the leave donor's employment is terminated by separation, retirement, or death during the temporary leave transfer program.

*** Please forward this completed Form along with a copy of Mr. Ault's Form M-5991, Biweekly Leave Statement and Paper Notice (beginning with Pay Period # 14-87) following the close of each Pay Period to the above address throughout the duration of the Temporary Leave Transfer Program.

Business Notes

Employee benefits: IRS colleagues rally round William Ault

Advertising: the matador's suit of lights was greeted with jeers

TELEPHONES

Reach Out and Rake It In

The telephone titan, AT&T, was blessed last week with the prospect of a regulatory windfall. The Federal Communications Commission proposed scrapping the system of controlling AT&T's profit margins, which the agency has done for more than two decades as a means of limiting long-distance prices. Instead, the FCC aims to protect consumers by another method: setting price caps, which would freeze long-distance rates at current levels but could adjust them upward to account for inflation and other factors. AT&T rejoiced at the decision, which Wall Street analysts say could allow the company's profits to jump by an estimated 50% by 1990. But consumer advocates blasted the proposal and claimed it would bring an end to the slide in AT&T's long-distance prices, which have fallen some 34% since the company's divestiture in 1984.

ADVERTISING

Bullfight Fans Are Seeing Red

The scene at the bullring in Plasencia, Spain, was like a page from a Hemingway novel—almost. A chorus of "Ole' Ole'" greeted Matador Luis Reina as he stepped into the arena last week bedecked in his sky-blue, gold-embroidered suit of lights. But the cheers turned to jeers when the crowd noticed the letters A-K-A-I in red silk running down his sleeves and pant legs. For the first time, a matador had sold space on his costume for advertising. The Japanese electronics firm (the name translates as "red" in Japanese) is paying the 29-year-old, second-class matador about $16,000 every time he enters the ring in his logo-embellished outfit. That is roughly ten times as much as his pay for bullfighting alone.

AIRLINES

May I Twist Your Arm, Sir?

Travelers who plan to pass through Denver's Stapleton Airport any time soon should be prepared for an unusual encounter with ticket agents who come on like ambitious Dale Carnegie graduates. At Stapleton, where United and Continental are locked in one of the fiercest airline battles in the U.S., United is engaged in an all-out campaign to win friends and influence people to switch over from its rival's flights. In one United tactic, eager agents sidle up to unwary travelers as they pass through the terminal and lure them onto United flights with such promised incentives as earlier arrival times, better tasting food and superior service. Another strategy is to check computer listings for United customers who plan to change planes at the Denver hub for a Continental flight: those passengers are paged to the United counter and presented with the soft sell.

The politely arm-twisting United employees, whose campaign is limited so far to Denver's airport, wear green-and-white lapel pins bearing the acronym TORQUE, which stands for "Try Our Real Quality United Experience." But on the hidden backside of the pin is a more provocative symbol. It depicts a jet, similar to those in Continental's fleet, with a large screw embedded in its gold-painted tail.

EMPLOYEE BENEFITS

Giving a Buddy Your Break

Would you be willing to give up some of your vacation time or sick leave so that it could be used by a co-worker? When employees at the Internal Revenue Service's Cincinnati office read in an office memo a proposal to do just that a few weeks ago, their response was generous indeed. By last week 291 employees had donated 813 days of their sick leave and 92 days of vacation time to a co-worker, William Ault, 28, an IRS examiner who has leukemia.

Ault is one of three Government employees who were chosen as beneficiaries of a demonstration program in which workers can donate time off to colleagues who have lengthy illnesses or who need to stay home to care for stricken relatives. Last week Congress held hearings to discuss expanding the program. Its success so far may inspire businesses to try out the novel charity, which would impart a new meaning to the phrase "I gave at the office."

SHIPPING

Lighter Fluid Not Required

It nearly became Southern California's largest and most dangerous charcoal grill. When the cargo vessel *Fort Providence* sailed into port near Los Angeles, area residents were alarmed to hear that the ship was carrying 54,000 tons of coal close to igniting. Under way from Baton Rouge, La., to Taiwan, the coal began heating up, and its temperature reached 169° F.

Officials last week began what they saw as the only solution: unload the cargo and spread it out over 1½ acres to cool. Experts attribute the incendiary quality of the *Fort Providence* cargo to Louisiana's hot climate and to moist air pockets trapped in the load that kept the coal from cooling. Total cost of snuffing out the near barbecue: $800,000.

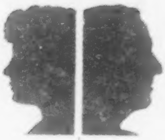
IRS SERVICE

A magazine for & about IRS people   Fall 1987

Throwing the Switch
The Service prepares to implement the Tax Reform Act of 1986 and it's nearly time to throw the switch.

Accent on Quality
The Service and NTEU have joined hands for quality improvement.

Sharing the Burden
The story of Joe and Shannon [illegible] has given impetus to the development of leave sharing for federal employees.

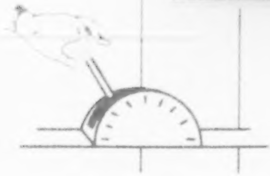


[illegible]ovation Pays
Innovation pays employees like Ken Kibort and the Service too through productivity.

MAKE YOUR TAXES LESS TAXING.

Service Realigns
National Office creates a senior deputy commissioner and two deputy commissioner posts.

Federal Fund
The Federal Employee Education and Assistance Fund can make a difference [illegible]



LEAVE SHARING

"Our lives were so remarkably different"

Personal tragedies can strike at any time. The stress brought on by a critical or fatal illness is enough to shatter emotions, destroy a family's well-being and create days and nights of pain and anguish.

Financial burdens grow, while paid leave reserves dwindle. The need to be with and care for loved ones often results in loss of the family's paycheck—even the job—just when money is needed the most.

Joe and Shannon Chiles, revenue agents in the IRS Ft. Lauderdale District, had to face the same emotional trauma when Shannon developed cancer. But the Chiles were spared the financial drain, thanks to their coworkers and a new concept called leave sharing.

"We were not the story—the efforts made on our behalf were the story," says Joe Chiles. "Our lives were so remarkably different as a result of leave sharing that I cannot conceive of what we would have done otherwise."

Chiles' remarks were part of his testimony at a recent Congressional hearing called to consider the question of leave sharing in The Federal Employees' Leave Act of 1987, H.R. 2487. If approved, the bill will require the Office of Personnel Management to establish a 5-year experimental program under which federal employees could voluntarily donate leave to coworkers who have used all their own leave and need leave because of a medical or family emergency requiring the employee's absence from duty.

The first case of leave sharing in the federal sector was for Joe and Shannon Chiles. Special Congressional

Congressman William Lehman of Florida introduced the first leave-sharing bill in 1986 on behalf of Joe and Shannon Chiles.

Joe Chiles is thankful for leave sharing which helped emotionally and financially during his wife Shannon's battle with cancer.

legislation in 1986, P.L. 99-500, enabled the Chiles to receive nearly six months of donated leave from co-workers who willingly sacrificed some of their own leave to help them. Joe Chiles was invited to appear as a witness at the hearing because of this experience.

The tragedy for the Chiles family began in 1984 when a routine test for Shannon showed the presence of cancer. However, subsequent tests came back normal, so with the approval of specialists, the couple decided to have a second child, which they desperately wanted. A week after their daughter's birth, "we were brought down to earth in a sickening instant," Joe relates. A pathology report showed the cancer progressing in a severe form of tumor.

The Chiles situation became more and more desperate. As the disease progressed, surgery and therapy were required, medical expenses increased, leave reserves diminished and yet Joe needed more and more time off work to be with Shannon and the children.

"Emotionally, things were getting more difficult . . . I found it hard to concentrate on my work . . . financially the picture was looking even bleaker . . . I had to borrow money just to pay the bills," Joe relates.

Time and again their hopes were raised that Shannon would get well—only to be swallowed up in emotional blackness when the cancer continued to advance.

Co-workers provide help

When co-workers finally found out what was going on they joined together in several fund-raising activities for the Chiles. But they wanted to do even more and after overcoming a number of obstacles and getting congressional support, special legislation was passed to allow leave sharing in the Chiles' case only.

Leave sharing relieved their financial burden and allowed Shannon the choice of spending the last months of her life at home, with Joe there to care for her and the children.

"I'm going to beat this cancer and live for my children," Shannon Chiles had told her friends—but at age 35, she lost her battle against the deadly disease.

"I cannot tell you how much it meant to Shannon to be at home . . . allowing visits with family and friends . . . seeing her children in a normal setting . . . preparing for death in the same place she had lived her life," Joe said.

"As Shannon and I often talked about what had been done for us, we were sustained time and again by the hope that this legislation would be brought to Congress," Joe testified at the hearing on leave sharing. "How thrilled she would have been to know this hope became a reality."

Gift is the same

Employees at all levels within the Ft. Lauderdale District donated leave to the Chiles family. When recently asked why, their basic reason was just to help. A clerk in the Ft. Lauderdale District explained her leave donation by saying, "I guess it was just to help out a fellow worker with the hope that if I ever need that kind of help, someone will be there to help me."

A manager who participated said, "I thought it was an opportunity to help people who needed help. They were in need and I could afford to donate leave, so I did. Knowing the two people involved, I was sure they would do the same for me."

A revenue agent donated a sizeable amount of leave to the Chiles. He felt he needed to respond to the serious situation. "Twenty some odd years ago, when I was about the Chiles' age, my daughter got spinal meningitis. So I really understand their feelings, having gone through the same type of difficulty in the past."

The agent is already saving up some of his leave to donate in the future if a national leave sharing bank is opened up. "Anything that meritorious has got to fly," he stated emphatically.

With leave sharing, everyone's gift is equal. The leave donated—whether from a top executive or a new employee—has the same value to the employee who desperately needs it.

Support for leave share increases

Following the Chiles case, support for the benefits and need of a leave sharing program in the federal sector increased. Last year Congress passed a continuing appropriations bill (P.L. 99-500) which included an authorization to the Office of Personnel Management to conduct a leave transfer experiment limited to three persons.

OPM received 242 requests from 32 different agencies to participate in the project—from which the three participants were selected.

"While we certainly expected to be able to find three worthy cases, almost every case that came in was worthy," James E. Colvard, deputy director of the Office of Personnel Management, testified at a subcommittee hearing.

"Agency managers and employees alike showed great enthusiasm for the program . . . and shared an eagerness to help," Colvard said.

"Even though we have not completed the current experiment . . . it is obvious that this program (leave sharing) offers an unusual opportunity for management and employees to share in doing something, in an immediate and personal way, that will help needy co-workers and their families," said the OPM Deputy Director.

The future

The future of approved leave sharing in the federal government seems bright. With some suggested changes, OPM enthusiastically supported the leave sharing bill, as did all those who testified at the recent hearing.

The House Subcommittee on Compensation and Employee Benefits which held the hearing is currently considering possible revisions to the bill in a number of areas, including whether donations would be to a leave bank or strictly one-to-one; whether to allow donated leave to include sick as well as annual leave and how to handle restoration of unused donated leave. Others questions involve inter-agency leave transfers, and requiring certification by a recognized authority that a personal emergency exists and its estimated duration.

As of press time, Congressman Gary L. Ackerman, chairman of the House Subcommittee on Compensation and Employee Benefits, has introduced a revised bill called The Federal Employees Leave Transfer Act of 1987, which includes some revisions to the original bill.

By Adele Beal, Public Affairs Specialist, National Office

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

COMMISSIONER

AUG 11 1987

Mr. Joe Chiles
7308 Arrowwood Road
Louisville, KY 40222

Dear Joe:

I'm sorry that our schedules did not allow us to meet the other day before you and Bill Pfeil testified on leave sharing. I did read the testimony and related materials that Legislative Affairs had assembled, and was deeply moved by your story and impressed by the way you told it. Your Shannon was a wonderful woman.

Throughout this period, you consistently displayed the sorts of personal and professional qualities that make me proud to be associated with the Internal Revenue Service. It's obvious from the efforts made by Bill Pfeil and your other colleagues in the Service that they agree.

I wish you and your family the very best in the months ahead. Recovering from such a loss will not be easy, and may never be complete, but I'm sure the courage and faith you've shown so far will serve you well.

God bless you.

Sincerely,

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

COMMISSIONER

AUG 11 1987

Mr. William Pfeil
13471 S.W. 28th Street
Davie, FL 33330

Dear Bill:

I'm sorry that my schedule did not allow us to meet the other day before you and Joe Chiles testified on leave sharing. I did read the testimony and related materials that Legislative Affairs had assembled, and was both moved by the story and impressed by your role in it.

Your compassion and willingness to help fellow employees in need are simply outstanding, and make you a key player in this situation. Your ability to make things happen is no less impressive. I'm proud to be associated with you and the Internal Revenue Service.

I wish you all the best in your career.

With kind regards,

Sincerely,

Larry Gibbs

QUESTIONS SUBMITTED BY SENATOR PRYOR TO THE INTERNAL REVENUE SERVICE

1. In your testimony, you indicate that at least 215 IRS employees have expressed interest in the 1988 leave transfer pilot program. One concern that has been raised regarding the pilot is the varying amounts of leave that could be donated to each individual without regard to the need of the individual. For example, some employees may receive more than they need and others may not receive enough.

   a. Do you believe a leave sharing program should consider the need of the individual, rather than who the recipient knows or how popular he may be?

      The leave sharing program should be directed at alleviating the personal hardship of individuals. The personal nature of the program---individuals coming to the aid of one another when in need---is its most positive feature and one that should be retained.

   b. What personnel or morale problems do you think will be created by the pilot approach? How do you plan to address these problems?

ANS: We anticipate no personnel or morale problems. In fact, we expect that implementation of the program will have a positive impact on employee morale by providing a new alternative when personal hardship situations occur.

2. The recent regulations issued by the Office of Personnel Management on the temporary leave transfer program detail the formula the agencies will use in returning unused annual leave to the donors. It seems to me that the restoration process will become quite burdensome to the agencies as more leave transfer cases are approved and paperwork mounts. How does your agency plan to keep track of the leave accounts, and will your agency require additional personnel to administer this program?

ANS: For the duration of the temporary program, we will continue with a decentralized, manual process for the receipt, reporting, and maintenance of leave transfer information. Responsibility for the maintenance of such records will reside with each personnel office. However, as I noted in my testimony at the hearing, the actual transfer of leave to the accounts of approved leave recipients will continue to be centralized to our payroll office in the Detroit Data Center. At this time, we do not anticipate the need for additional personnel to administer the program.

3. Mr. Dolan, in your testimony, you indicate that you have prepared your internal procedures to implement the OPM regulations for the FY 88 leave transfer program.

   a. Since the IRS is a decentralized organization having 112,000 employees, will leave transfers be restricted to each district office, or will they be permitted on an agency wide basis?

   Leave transfers would be permitted on an agency-wide basis under our internal procedures.

   b. What, if any, assistance did OPM give you in developing your procedures?

ANS: The Office of Personnel Management has been helpful in providing overall program guidance and general assistance with the development of our leave transfers procedures.

4. Given your experiences thus far with leave sharing, if you were given the task of setting up a leave bank program for IRS employees, how would you go about doing it? Do you feel it would be more or less administratively burdensome?

ANS: The leave bank concept presents situations that have not yet been thoroughly evaluated and raises many questions as to how the bank would be administered. However, in spite of these uncertainties, we favor a leave bank concept that provides the donor with an option as to how the leave is to be applied: to donate leave to a specific individual as well as to a general leave bank.

If we were to establish a leave bank for IRS employees, it would probably have the following features:

- the emphasis would remain on advocating the personal nature of the program, i.e., individual donations to an individual in need;
- donations to a general leave "fund" or bank would also be permitted;
- leave restoration would be eliminated, and any unused donated leave would be left on deposit in the leave bank; and

- although still in a conceptual stage at this point, we currently favor a decentralized approach to the implementation of the leave bank concept within IRS. Again, with emphasis on the personal nature of the program, we feel that those who need this assistance would benefit form a local approach to the administration and maintenance of the leave bank. While leave transfers would be permitted on an agency-wide basis, as I noted earlier, the leave banks would be controlled on a regionwide, districtwide, or some other local basis that would provide an adequate supply of leave donors and a timely mechanism for the initiation of leave transfers. Properly crafted, this arrangement should not be any more administratively burdensome than the current system.

STATE OF CONNECTICUT
DEPARTMENT OF ADMINISTRATIVE SERVICES
PERSONNEL DIVISION
STATE OFFICE BUILDING, HARTFORD, CONNECTICUT 06106-1630

March 16, 1988

Senator David Pryor, Chairman
Subcommittee on Federal Services, Post Office and Civil Services
601 Hart Senate Office Building
Washington, DC 20510

Dear Senator Prvor:

I would like to thank you and the members of the subcommittee for allowing the State of Connecticut an opportunity to discuss our sick leave programs including our sick leave bank and our donation of accumulated leave programs. The following material will provide a summary of Connecticut's sick leave procedures.

HISTORY

Connecticut's centrally coordinated sick leave program came into being with the passage of the Civil Service Act of 1937. The act provided for the implementation of regulations governing the accrual and use of sick leave. It also included the authority to advance sick leave to employees under certain conditions. Limitations on the maximum accrual were changed from time to time until 1969 when the ceiling was removed and unlimited accrual was authorized. The method of accrual and the amount per month of one and one-quarter days has remained unchanged for over 51 years.

The Sick Leave Programs in effect at this time are authorized by statute or by collective bargaining contract. A brief synopsis of each is as follows:

SICK LEAVE

Basic accrual rate is one and one-quarter days for each completed calendar month of full-time service. Part-time employees receive pro-rated amounts. There is no limit to the amount accrued.

ADVANCE OF SICK LEAVE

This program provides for an advance of one day of sick leave for each full year of service to a maximum of 30 days to full-time permanent employees having a minimum of five years of service an who have used up all accrued leave of all types. The employee is required to repay this advance. Repayment begins after the employee has returned to work and has accrued five days of sick leave.

UNUSED SICK LEAVE AT TIME OF RETIREMENT

An employee at retirement will receive one-quarter of a day's pay for each unused day of sick leave up to a maximum of 60 day's pay (240 Sick Leave days)

EXTENDED SICK LEAVE

This program is limited to employees who have 20 years of service and have exhausted all accrued leaves and all advanced sick leave. Up to 30 days of half-pay can be authorized. No pay back is required.

SICK LEAVE BANKS

Two bargaining units have negotiated the establishment of a sick leave bank. The procedures of depositing sick leave time and the requirements for drawing from the bank are spelled out in the collective bargaining contracts, and these are included in the attached documents.

Employees covered by these contracts may not participate in other programs involving advance of sick leave.

TRANSFER OF VACATION AND PERSONAL LEAVE

State Managers and a number of collective bargaining contracts allow a voluntary transfer of vacation and personal leave by employees to another employee who has used up all accrued leave and can no longer remain an active payroll. The amounts allowed and method of application are spelled out in each contract. Instruction for managers are contained in a managerial directive. Sick leave cannot be donated. Copies of our bargaining unit and management policies are attached for your review.

Summary of Programs

The initial sick leave bank was established in 1979 for our Administrative and Residual bargaining unit. This unit is made up of our accountants, business managers, purchasing agents and other general business administrator classes. There are approximately three thousand members in this bargaining unit. Our other sick leave bank program for Education Administrators was initiated in 1984 and is patterned after the Administrative and Residual bargaining unit contract. There are approximately 230 members in the Education Administrators bargaining unit. Both programs were initiated at the request of the employee bargaining team as a method of providing a continuation of benefits for seriously ill employees. Both sick leave banks require members of the bargaining unit to contribute sick leave days to the bank. The agreement for the Administrative and Residual unit also required management to contribute 2000 hours to the bank. Both bank programs are administered by a subcommittee made up of two union and two management designees. Both programs have been operating with a minimal of administrative cost and have been generally successful. Recent conversations with union representatives have indicated that they plan to recommend continuation of the program when future negotiations are initiated.

Our initial concern was that the creation of such sick leave banks would ultimately result in a greater use of sick leave by those covered by the sick leave bank. Our analysis of sick leave usage in the Administrative and Residual bargaining unit after the first year indicated an increase over the previous year, and we were very concerned that a negative pattern had begun. Subsequent sick leave usage in that bargaining unit returned to normal, and we now feel that this increase was within normal fluctuation. No change was noted in sick leave usage in the Education Administrators contract.

The Administrative and Residual sick leave bank subcommittee approves approximately 15-20 requests for use of the sick leave bank per year. The Education Administrator subcommittee has approved a total of three requests since their program began in 1984. While there is great similarity between the two programs, there are some significant differences. Both allow up to 100 days per year with the Administrative and Residual bank paying 50% of compensation and the Educational Administrators bank paying 80% of compensation. In addition, the Educator Administrators agreement requires that the employee repay the bank upon return to full-time employment at the rate of 20% of his/her unused accured sick leave at the end of each calender year. One other significant difference is that the Administrative and Residual agreement does not allow access to our regulation which provides for an advance of sick leave.

Connecticut's donation of leave agreements cover employees within eight bargaining units as well as our managerial and confidential employees. Approximately 32,000 employees are covered by our donation of leave process. The two bargaining units utilizing the sick leave bank concept have not sought donation of leave agreements.

The donation of leave concept was implemented in August of 1986 as a result of a request by a number of employees of one of our Mental Health facilities who wished to donate some of their accumulated vacation leave to a seriously ill co-worker. As a result of this request, supplementary agreements were signed with eight of our bargaining unit and the concept also applied to our managerial and confidential employees. Only vacation and personal leave can be donated, not sick leave. Donation of vacation and personal leave may occur only within the same bargaining unit and only within the same agency. Requests to donate leave must be initiated by the union or a group of employees. It is our position that management should play a neutral role in the process and requests should not generate from management. The Department of Administrative Services, Personnel Bureau, Connecticut's central personnel agency, retains the authority to approve or reject requests for donation of leave. Our experience with the donation of leave agreements has been positive and administrative costs related to the program have been minimal. We have not experienced complaints about coertion or pressure to donate leave. We do not consider the donation of leave to a co-worker to be a violation of our Code of Ethics. We have received approximately 25 requests for donation of leave during the last six months.

Comparison of Sick Leave Bank and Donation Programs

The attached supplements provide a more detailed outline of our programs. Both programs work well and have required a minimum of administrative costs. Each bargaining unit seems satisfied with the basic process as negotiated. Representatives from our Administrative and Residual bargaining unit have expressed a desire to continue with their sick leave bank program which has changed very little since 1979. Representatives from our Health Care Professional an Paraprofessional bargaining units have requested that their donation of leave agreements be changed at the next round of negotiations to allow donations to be received from employees of all agencies covered by the bargaining unit. We have resisted this concept in earlier negotiations because we feel that it would be too difficult to administer.

While there are advantages and disadvantages to each method, employees working in small agencies or agencies where there are a small number of employees in the specific bargaining unit do not have the potential to receive significant donations of leave. The sick leave bank concept, which receives donations from all members covered by the bargaining unit, would be better able to provide assistance to employees in small agencies or small bargaining units.

Sincerely,

Peter C. Rozantes,
Section Chief

PCR:VMS

ATTACHMENTS

Supplementary Material

1. General letter No. 205, which includes Connecticut's Statutes and regulations for sick leave

2. Administrative and Residual Bargaining unit sick leave bank language.

3. Labor Relations General Notice 80-1 which outlines the procedures to follow for the Administrative and Residual sick leave bank and other related guidelines and notices.

4. Education Administrators Bargaining unit sick leave bank contract language.

5. Education Administrators sick leave bank application and guidelines

6. Management Policy 86-2 Amended which authorizes the donation of leave for Managers and confidential employees.

7. Labor Relations General Notice 86-4 (Amended). which outlines procedures for the donation of leave time in eight of our bargaining units.

STATE OF CONNECTICUT
PERSONNEL DIVISION
DEPARTMENT OF ADMINISTRATIVE SERVICES
STATE OFFICE BUILDING HARTFORD, CONNECTICUT 06115

GENERAL LETTER NO. 205

RE: Revised Sick Leave Statute and Regulations

DATE: December 11, 1980

Recently the State Personnel Division revised its regulations regarding sick leave. These revisions reflected the changes made to Section 5-247 of the General Statutes. The purpose of these changes was to clarify the use of sick leave for employees holding permanent positions and to clarify the accrual and computation of sick leave. The effective date of the revised sick leave regulations is December 1, 1980, the date the revisions were approved by the Secretary of the State. Agencies are reminded that collective bargaining agreements may supersede these regulations. Questions regarding sick leave regulations may be addressed to our Administrative Section at 566-5530 or 566-3236. Copies of Section 5-247 of the General Statutes and Regulations 5-247-1 and 5-247-2 are provided for your review and guidance.

Sandra Biloon
Director of Personnel and
Labor Relations

SB/mrs

SECTION 5-247 (a) of the GENERAL STATUTES

Each appointing authority shall grant, on account of illness or injury, to each full-time employee in a permanent position in the state service who has furnished satisfactory proof of such illness or injury, such sick leave with pay as has accrued to his credit at the rate of one and one-quarter working days for each completed calendar month of continuous full-time service which may be computed on an hourly basis. Hourly computation of sick leave shall not diminish benefit entitlement. Any such payment shall be excluded from wages for which social security contributions are made, in accordance with the provisions of subsection (b) of Section 209 of the Federal Social Security Act of August 14, 1935 (49 Stat. 625), as from time to time amended. On or before October 1, 1980, the Commissioner of Administrative Services shall adopt regulations in accordance with Chapter 54, concerning the accrual, prorating and granting of sick leave with pay to other employees in the state service and extending sick leave with pay or with part pay for longer periods to full-time permanent employees disabled through illness or injury. Each such employee who retires under the provisions of Chapter 66 shall be compensated, effective as of the date of his retirement, at the rate of one-fourth of such employee's salary for sick leave accrued to his credit as of his last day on the active payroll up to a maximum payment equivalent to sixty days of four hundred twenty hours' pay. Such payment for accumulated sick leave shall not be included in computing retirement income and shall be charged by the state comptroller to the department, agency or institution in which the employee worked.

REGULATION 5-247-1 - Sick Leave

Except as otherwise provided by statute, all employees in state service shall accrue sick leave for continuous service from the date of initial employment but are not credited with or eligible to use it until such time as they are employed in a permanent position.

REGULATION 5-247-2 - Rate of Accrual

Sick leave accrues at the rate of one and one-quarter working days per completed calendar month of continuous full-time service, which may be computed on an hourly basis, including authorized leave with pay provided that:

(1) such leave starts to accrue only on the first working day of the calendar month and is credited to the eligible employee on the completion of the calendar month;

(2) an eligible employee employed on less than a full-time basis shall be granted leave in proportion to the amount of time worked as recorded in the attendance and leave records;

(3) no such leave will accrue for any calendar month in which an employee is on leave of absence without pay an aggregate of more than three working days;

(4) sick leave shall accrue for the first twelve months in which an employee is receiving compensation benefits in accordance with Section 5-142 or 5-143 or the General Statutes.

REGULATION 5-247-4. – BASIS FOR ELIGIBILITY.

(a) An eligible employee shall be granted sick leave

- (1) for medical, dental, or eye examination or treatment for which arrangements cannot be made outside of working hours;
- * (2) in the event of death in the immediate family when as much as three working days leave with pay shall be granted. Immediate family means husband, wife, father, mother, sister, brother, or child, and also any relative who is domiciled in the employee's household;
- (3) in the event of critical illness or severe injury to a member of the immediate family creating an emergency, provided that not more than three days of sick leave per calendar year shall be granted therefor;
- (4) for going to, attending, and returning from funerals of persons other than members of the immediate family, if permission is requested and approved in advance by the appointing authority and provided that not more than three days of sick leave per calendar year shall be granted therefor.

* per funeral

REGULATION 5-247-5. – ADVANCE SICK LEAVE. - Sick leave of Future Pay

(a) No sick leave in excess of the leave accumulated to the employee's credit may be granted by the appointing authority unless approved by the Commissioner of Personnel and Administration. Such authorization shall be granted only in cases involving extended periods of illness or injury. In requesting an advance of sick leave the appointing authority shall submit the following facts for the consideration of the Commissioner of Personnel and Administration:

- (1) The length of state service of the employee;
- (2) The classification of the employee;
- (3) The sick leave record of the employee for the current and for the four preceding calendar years;
- (4) A medical certificate which shall be on the prescribed form and which shall include the nature of the illness, the prognosis, and the probable date when the employee will return to work.

(b) No advance of sick leave may be authorized unless the employee shall have first exhausted all accrual to his credit for sick leave, personal leave, earned lieu time and for vacation leave, including current accruals. No advance of sick leave may be granted unless an employee has completed at least five years of full time work service. If approved, such extension shall be on the basis of one day at full pay for each completed year of full time work service. In no case shall advanced sick leave exceed thirty days at full pay.

(c) Any such advanced sick leave as may be granted by the Commissioner of Personnel and Administration shall be repaid by a charge against such sick leave as the employee may subsequently accrue. No repayment of advanced sick leave shall be required until the employee has first accrued five days of sick leave following his return to duty.

REGULATION 5-247-6. – EXTENDED SICK LEAVE.

An employee who has at least twenty years of state service and who has exhausted his sick leave and his advance of sick leave may be granted extended sick leave with half pay for thirty days* upon the appointing authority's request and subject to approval by the Commissioner of Personnel and Administration.

30 working Days Per
S. B. – 7-16-76

REGULATION 5-247-7. – SICKNESS WHEN ON VACATION.

If an employee is sick while on annual vacation leave the time shall be charged against accrued sick leave if supported by a medical certificate filed with the appointing authority.

REGULATION 5-247-8. – HOLIDAYS OCCURRING WHEN ON SICK LEAVE.

A holiday occurring when an employee is on sick leave shall be counted as a holiday and not charged as sick leave. When a full day off is granted by the act of the Governor, an employee on sick leave shall not be charged as being on sick leave.

REGULATION 5-247-9. – EFFECT OF LAYOFF ON ACCRUED SICK LEAVE.

An employee laid off shall retain accrued sick leave to his credit provided he returns to state service on a permanent basis.

REGULATION 5-247-10. – REEMPLOYMENT.

An employee who has resigned from state service in good standing and who is reemployed within one year from the effective date of his resignation shall retain sick leave accrued to his credit as of the effective date of his resignation.

STATE OF CONNECTICUT
PERSONNEL DIVISION
DEPARTMENT OF ADMINISTRATIVE SERVICES
STATE OFFICE BUILDING HARTFORD, CONNECTICUT 06115

GENERAL LETTER NO. 199

RE: Sick Leave Bank, Administrative & Residual (P-5) Unit

DATE: May 6, 1980

Article XX of the Administrative and Residual contract provides for the establishment of a Sick Leave Bank to be utilized by qualified A & R employees who have exhausted all sick leave, all personal leave, and vacation leave in excess of 60 days. Agencies with employees who are eligible to utilize such benefits from the Bank should be aware of the following requirements:

Eligibility to use benefits from the Sick Leave Bank has been determined by the Sick Leave Bank Subcommittee; the requirements are outlined on the Application for A & R Sick Leave Bank Use. Employees and agencies must complete the application and forward it to the State Personnel Division's Office of Labor Relations for appropriate action by the Sick Leave Bank Committee. Applications are available at the agency Personnel Office or at the Office of Labor Relations.

If and when approval is received for payment of benefits from the Sick Leave Bank, the eligible employee's leave and attendance record should clearly reflect the use of this unique benefit. The Comptroller's Office has suggested the use of the designation "SLB" to reflect this type of absence. Communication between the Sick Leave Bank Committee and agency personnel/payroll units to keep each other informed about changes in status of recipients is essential to ensure proper administration of the Bank.

The State of Connecticut will continue to pay the normal contribution for employee health insurance and group life insurance premiums and dependent health insurance premiums during the period the employee is utilizing benefits from the Bank.

While on Sick Leave Bank status, full service credit will accrue for retirement eligibility purposes. However, for purposes of benefit computation, the benefit will be pro-rated in accordance with the number of hours credited for pay purposes. If the Bank is supplemented by use of vacation leave available after appropriate deduction consistent with eligibility requirements, additional credit may also accrue.

Longevity will be calculated to reflect the half-time status of the employee during the time he/she is receiving benefits from the Sick Leave Bank. The longevity calculation is in effect a reflection of the number of hours for which the employee is paid. Longevity checks will be payable at the normal intervals, i.e. April and October. If the Bank is supplemented by use of vacation leave available after appropriate deduction consistent with eligibility requirements, additional credit may also accrue.

Seniority will be calculated as if the employee is working on a half-time basis while receiving benefits from the Bank. If the Bank is supplemented by use of vacation leave available after appropriate deduction consistent with eligibility requirements, additional credit may also accrue.

During the period of time the employee is receiving benefits from the Bank, he/she will be considered to be on active status. Any deductions from the employee's paycheck will continue as they would when an employee is on normal sick leave. This means that the employee's benefit is subject to deductions for retirement, social security, health benefits and appropriate Union dues, etc. and is also subject to garnishment pursuant to an order of a court of competent jurisdiction.

Additional information on the Sick Leave Bank is contained in Office of Labor Relations General Notices Nos. 79-9 and 80-1. It is anticipated that the Comptroller's Office will also be promulgating specific payroll instructions on this matter.

Please contact the Office of Labor Relations at 566-2370 if you have any questions on the subject.

Sandra Biloon
Director of Personnel & Labor Relations

SB/bcz

9/82

SICK LEAVE BANK GUIDELINES

An Emergency Sick Leave Bank has been established to provide full-time, permanent employees in the A & R bargaining unit with partial salary benefits during periods of long-term disability and/or illness. This Bank is specifically provided for in Article XX of the A & R Collective Bargaining Contract, effective July 1, 1981.

A Sick Leave Bank Committee has been established to administer the Bank, comprised of two designees of the Employer and two designees of the Union.

This Committee is not an agency of the State of Connecticut. The decisions of this Committee are made by mutual consent and are neither arbitrable nor litigable, and its actions are appealable only to the Committee. The Committee disburses no monies and has no authority to disburse any monies.

An employee may be eligible to use sick leave benefits from the Bank when:

1. The employee has been employed by the State for more than two (2) years.
2. The employee has exhausted all sick or personal leave, vacation leave in excess of sixty (60) days, and any other compensatory time due.
3. The illness or injury is not covered by Workers' Compensation and/or such compensation benefit has been exhausted.
4. An acceptable medical certificate supporting the continued absence is on file.
5. The employee has not been disciplined for sick leave abuse during the past two (2) years. Disciplinary action is to be interpreted by the Sick Leave Bank Committee.

No applicant will be considered unless he/she can demonstrate:

(a) That he/she is a member of the A & R bargaining unit and has made all appropriate dues, fees or assessment payments.

(b) At the time of application, there is no pending action against that employee for abuse of sick leave.

(c) That he/she has acknowledged receipt of and agreement to comply with the terms and conditions of the Sick Leave Bank.

The applicant agrees that he/she shall remain liable for all proof necessary to qualify for the benefits sought. The Committee reserves the right to request such medical evidence as it deems necessary to consider the application and/or to re-evaluate the continuing need for benefits hereunder. Physician's reports submitted must be current, and medical certificates must be renewed every thirty (30) calendar days to attest to the continuing illness and/or disability and the prognosis for recovery. To justify qualification for the benefits described herein, an applicant claiming a psychiatric or psychological condition or disorder must submit a report from a certified and practicing psychiatrist or psychologist.

The Committee reserves the right, at any point in time, to require a second opinion concerning continuing illness or disability. If a second opinion is requested, the applicant has two options for securing same. The applicant may agree to be examined by a State physician, in which case the applicant will not be liable for the cost of said examination, or the recipient may choose to see a physician of his/her own choice, in which case, the applicant shall be liable for any costs incurred in connection therewith.

Grants of benefit can be made during the life of the contract for a period of from one-half (1/2) day to one hundred (100) days per contract year at a rate of one-half (1/2) day for each day of illness or injury. Proportional benefits may accrue for those who return to work on a part-time basis. The applicant understands that benefits are granted and discontinued based upon:

(a) continuing qualification;
(b) completeness of information; and
(c) availability of benefits.

Requests for benefits will be handled by the Committee on a first come, first served basis. No benefit shall accrue for any period sixty (60) days prior to the date of the submission of the completed application. Application for A & R Sick Leave Bank usage must be resubmitted every contract year. The 15 day waiting period shall be waived in cases of:

1. follow-up treatment and/or recurrence of a previously compensable condition within the same contract year.

2. a condition which persists into the succeeding contract year.

The applicant understands that the benefits granted by the Committee are intended to cover only the illness/injury of the applicant. The Bank is available only for a condition certified by the applicant's physician as precluding return to work. The nursing of a newborn is not considered cause for use of the Bank.

If an individual receives the benefits of this Bank during the pendency of a contested Workers Compensation claim, the individual shall assign such portion of the award as may ultimately be granted to reimburse the Bank, should the claim succeed. Thereafter, if the illness/injury exceeds the duration for which Workers Compensation is to be paid, the individual may qualify for additional benefits.

9/82

The Committee reserves the right to discontinue the benefit at any time when it is demonstrated that the intentional conduct of the applicant has prolonged, worsened or in fact caused the illness or injury for which compensation is sought. All benefits shall be terminated upon:

(a) Certification of return to health;
(b) Exhaustion of annual eligibility;
(c) Retirement, resignation, termination, layoff or demise of recipient;
(d) Commitment to any public institution in any case in which fees are not paid;
(e) Culmination of two consecutive years of receiving Sick Leave Bank benefits.

The applicant understands that the bank for the sick leave benefit is derived from contributions of A & R members and the employer, made in accordance with a predetermined formula and finite in number. Therefore, all applicants understand that it is possible that the bank may be exhausted at any time. In that case, the applicant understands that all grants of benefit shall termi mate. Subsequent replenishment of bank hours will not be subject to retroactive claims.

The applicant agrees that reimbursement shall immediately be made to the Bank in the case of accidental miscalculation or overpayment.

NOTE: These guidelines are augmented by Article XX of the A & R Collective Bargaining Contract, effective July 1, 1981.

P-5

ADMINISTRATIVE AND RESIDUAL BARGAINING UNIT

P-5

CONTRACT

BETWEEN

STATE OF CONNECTICUT

AND

ADMINISTRATIVE
AND RESIDUAL
EMPLOYEES UNION

LOCAL 4200 AFT, CSFT, AFL-CIO

Effective: July 1, 1984 Expiring: June 30, 1987 the current balance available to each employee. The records shall be subject to review by the Director of Personnel and Labor Relations, and said records shall be available at reasonable times to the employee concerned.

Section Nine. Sick leave shall accrue for the first twelve (12) months in which an employee is receiving Workers' Compensation benefits.

Section Ten. A medical certificate may be required under the following circumstances:

(a) sick leave of more than five (5) consecutive days;

(b) a recurring problem with intermittent manifestations;

(c) sick leave of more than two (2) days during any vacation leave.

In all other cases a medical certificate shall be treated as a disciplinary accusation, and shall be for cause.

Section Eleven. Upon death of an employee who has completed ten (10) years of State service, the employer shall pay to the beneficiary one-fourth (1/4) of the deceased employee's daily salary for each day of sick leave accrued to his/her credit as of his/her last day on the active payroll up to a maximum payment of sixty (60) days' pay. The provisions of this Section shall take effect July 1, 1980.

Section Twelve. This Article supersedes Regulations 5-247-1 through 5-247-4 and 5-247-7 through 5-247-11.

P-5

ARTICLE 20

SICK LEAVE BANK

Effective July 1, 1979, there shall be established an Emergency Sick Leave Bank to be used by full-time permanent employees. An eligible employee requesting use of emergency sick leave may make application on the prescribed form to a Labor Management subcommittee established to administer the program. Said committee shall be comprised of four (4) designees, two (2) from the employer and two (2) from the Union, and shall have full authority to grant benefits and administer the program in accordance with the guidelines below or as mutually agreed to. Time off without loss of pay or benefits shall be granted to members of the subcommittee to attend meetings as necessary to administer this program. The employer shall contribute two thousand (2,000) hours to the bank.

An employee shall be eligible to use sick leave benefits from the bank when:

(1) The employee has been employed by the State for more than two (2) years.

(2) The employee has exhausted all sick or personal leave, vacation leave in excess of sixty (60) days, and any other compensatory time due.

(3) The illness or injury is not covered by Workers' Compensation and/or such compensation benefit has been exhausted.

(4) An acceptable medical certificate supporting the continued absence is on file.

(5) The employee has not been disciplined for sick leave abuse during the past two (2) years; provided however that the committee may waive this requirement.

Benefits under this Article shall accrue at the rate of one-half (1/2) day for each day of illness or injury commencing with the sixteenth day after exhaustion of leave or Workers' Compensation as outlined above. No employee shall be eligible to draw from the bank more than once per contract year, more than one hundred (100) days per year of illness, or if the fund is depleted. Employees receiving benefits under this Article shall not accrue vacation or sick leave during the period of eligibility or be eligible for holiday or other paid leave benefits.

The employer shall hold the position for any employee who has been placed on sick leave bank for a period of not less than forty-two (42) calendar days. This provision shall not preclude agencies from holding the position for longer periods up to and including the actual length of the leave.

If at any time the fund should fall below 10,000 hours, the Committee shall recommend a contribution from each full-time employee. Said contribution shall not exceed seven (7) hours in any calendar year. In the event an employee does not use sick leave in any six (6) month period (July to January or January to July), one-half (1/2) of his/her contribution to the bank if any, shall be reimbursed or the normal annual deduction adjusted accordingly.

Employees shall be exempt from contribution to the fund until they have achieved (a) two (2) years of State service, and (b) permanent status in a P-5 position, whereupon said deduction shall be made as directed by the committee.

The actions or non-actions of this panel shall in no way be subject to collateral attack or subject to the grievance-arbitration machinery. The panel shall not be considerd a State agency, nor shall it be considered a board or other subdivision of the employer. All actions shall be taken at the discretion of the panel, and no requests shall be conducted as contested cases.

This Article supersedes Regulations 5-247-5 and 5-247-6.

P-5

ARTICLE 21

PREGNANCY, MATERNAL AND PARENTAL LEAVE

Disabilities resulting from or contributed to by pregnancy, miscarriage, abortion, childbirth or maternity, defined as the hospital stay and any period before or after the hospital stay certified by the attending physician as that period of time when an employee is unable to perform the requirements of her job, may be charged to any accrued paid leaves. Upon expiration of paid leave, the employee may request, and shall be granted, a medical leave of absence without pay position held. The total period of medical leave of absence without pay with position being held shall not exceed six (6) months following the date of termination of the pregnancy (also see provisions of Article 12, Seniority). A request to continue on a medical leave of absence due to disability as outlined above must be in writing and supplemented by an appropriate medical certificate. Such requests will be granted for an additional period not to exceed three (3) additional months. If granted, the position may or may not be held for the extended period subject to the appointing authority's decision.

Up to three (3) days of paid leave, deducted from sick leave, will be provided to an employee in connection with the birth, adoption or taking custody of a child.

STATE OF CONNECTICUT
PERSONNEL DEPARTMENT
STATE OFFICE BUILDING - HARTFORD, CONNECTICUT 06115

February 27, 1980

OFFICE OF LABOR RELATIONS

General Notice No. 80-1

TO: Labor Relations Designees

Enclosed herewith is a copy of the revised application for Sick Leave Bank benefits under Article XX of the Administrative & Residual (P-5) contract, with attached Sick Leave Bank Guidelines.

Please ensure that copies are distributed to all work sites so as to be available to all eligible employees.

Robert Finder
Robert Finder
Labor Relations Director

RF:LAG/g

An Equal Opportunity Employer

Rev. 3/1/80

SICK LEAVE BANK GUIDELINES

Effective July 1, 1979, an Emergency Sick Leave Bank was established to provide full-time, permanent employees with partial salary benefits during periods of long-term disability and/or illness. This Bank is specifically provided for in Article XX of the A & R Collective Bargaining Contract, effective July 1, 1979.

A Labor Management Subcommittee was established to administer the Bank comprised of two designees of the Employer and two designees of the Union.

This Committee is not an agency of the State of Connecticut. The decisions of this Committee are made by mutual consent and are neither arbitrable nor litigable, and its actions are appealable only to the Committee. The Committee disburses no monies and has no authority to disburse any monies.

An employee may be eligible to use sick leave benefits from the Bank when:

1. The employee has been employed by the State for more than two (2) years.
2. The employee has exhausted all sick or personal leave, vacation leave in excess of sixty (60) days, and any other compensatory time due.
3. The illness or injury is not covered by Workmen's Compensation and/or such compensation benefit has been exhausted.
4. An acceptable medical certificate supporting the continued absence is on file.
5. The employee has not been disciplined for sick leave abuse during the past two (2) years.

No applicant will be considered unless he/she can demonstrate:

(a) That he/she is a member of the A & R bargaining unit and has made all appropriate dues, fees or assessment payments.

(b) At the time of application, there is no pending action against that employee for abuse of sick leave.

(c) That he/she has acknowledged receipt of and agreement to comply with the terms and conditions of the Sick Leave Bank.

The applicant agrees that he/she shall remain liable for all proof necessary to qualify for the benefits sought. The Committee reserves the right to request such medical evidence as it deems necessary to consider the application and/or to re-evaluate the continuing need for benefits hereunder. Physician's reports submitted must be current, and medical certificates must be renewed every thirty (30) calendar days to attest to the continuing illness and/or disability and the prognosis for recovery. To justify qualification for the benefits described herein, an applicant claiming a psychiatric or psychological condition or disorder must submit a report from a certified and practicing psychiatrist or psychologist.

The Committee reserves the right, at any point in time, to require a second opinion concerning continuing illness or disability. If a second opinion is requested, the applicant has two options for securing same. The applicant may agree to be examined by a State physician, in which case the applicant will not be liable for the cost of said examination, or the recipient may choose to see a physician of his/her own choice, in which case the applicant shall be liable for any costs incurred in connection therewith.

Grants of benefit can be made during the life of the contract for a period of from one-half (1/2) day to one hundred (100) days per contract year at a rate of one-half (1/2) day for each day of illness or injury. The benefit may be granted only for continuing illness and/or injury and only for that period of time in which the physician certifies that the employee is unable to return to work. The applicant understands that benefits are granted and discontinued based upon:

(a) continuing qualification;
(b) completeness of information; and
(c) availability of benefits.

Requests for benefits will be handled by the Committee on a first come, first served basis. No retroactivity shall accrue for any period prior to the date of the submission of the completed application and all required medical documentation.

The applicant understands that the benefits granted by the Committee are intended to cover only the illness/injury of the applicant. The Bank is available only for a condition certified by the applicant's physician as precluding return to work. The nursing of a newborn is not considered cause for use of the Bank.

Whenever it appears that an applicant will need additional attention after return to work (such as cosmetic surgery, removal of prosthetic devices, etc.) which will require hospitalization or bedrest, that procedure, if reflected upon the record during the first occurence, shall be exempt from the fifteen day waiting period if all of the conditions for eligibility are met.

If an individual receives the benefits of this Bank during the pendency of a contested Workers Compensation claim, the individual shall assign such portion of the award as may ultimately be granted to reimburse the Bank, should the claim succeed. Thereafter, if the illness/injury exceeds the duration for which Workers Compensation is to be paid, the individual may qualify for additional benefits.

The Committee reserves the right to discontinue the benefit at any time when it is demonstrated that the intentional conduct of the applicant has prolonged, worsened or in fact caused the illness or injury for which compensation is sought. All benefits shall be terminated upon:

(a) Certification of return to health;
(b) Exhaustion of annual eligibility;
(c) Retirement, resignation, termination, layoff or demise of recipient;
(d) Commitment to any public institution in any case in which fees are not paid.

The applicant understands that the bank for the sick leave benefit is derived from contributions of A & R members and the employer, made in accordance with a predetermined formula and finite in number. Therefore, all applicants understand that it is possible that the bank may be exhausted at any time. In that case, the applicant understands that all grants of benefit shall terminate. In the event of bank exhaustion, no requests for interrupted or retroactive benefits will be honored until the bank is replenished, if eligibility conditions are met, and to the extent that bank time is available.

The applicant agrees that reimbursement shall immediately be made to the Bank in the case of accidental miscalculation or overpayment.

NOTE: These guidelines are augmented by Article XX of the A & R Collective Bargaining Contract, effective July 1, 1979.

Rev. 3/1/80

APPLICATION FOR A & R SICK LEAVE BANK USE
(Article XX - A & R Contract)

TO BE COMPLETED BY EMPLOYEE AND FORWARDED TO AGENCY HEAD OR LABOR RELATIONS DESIGNEE:

Name ______________________________

Home Address ______________________________

Agency ______________________________

Official Class Title ______________________________

The applicant hereby authorizes access by the Sick Leave Bank Committee to any medical or personnel records necessary for action on this application. Applicant further certifies that he/she has carefully read the Sick Leave Bank Guidelines attached hereto, has received a copy thereof, and agrees to comply therewith.

______________________________ Signature of Applicant

______________________________ Date of Application

****

TO BE COMPLETED BY AGENCY LABOR RELATIONS DESIGNEE AND FORWARDED TO OFFICE OF LABOR RELATIONS, A & R SICK LEAVE BANK COMMITTEE:

	Yes	No
1. Has applicant been employed by State for at least two (2) years?	___	___
2. If applicant a member of the A & R (P-5) bargaining unit?	___	___
3. (a) Has applicant exhausted all sick leave?	___	___
(b) Give date on which all sick leave will be/was exhausted ______________		
4. (a) Has applicant exhausted all personal leave?	___	___
(b) Give date on which all personal leave will be/was exhausted ______________		
5. (a) Has applicant exhausted all compensatory time?	___	___
(b) Give date on which all compensatory time will be/was exhausted ______________		
6. (a) Has applicant exhausted all but sixty (60) days vacation credit?	___	___
(b) Give date on which all vacation in excess of 60 days will be/was exhausted ______________		
7. (a) Is illness or injury covered by worker's compensation?	___	___
(b) If yes, has worker's compensation benefit been exhausted?	___	___
8. Is applicant a full-time permanent employee?	___	___
9. Is acceptable medical certificate supporting the entire absence on file?	___	___

11. (a) Give date of commencement of illness or injury for which sick leave bank benefits are being requested ____________________

    (b) Give date applicant first returned to work after illness/injury ____________

12. Please attach the following:

    (a) Copies of all medical certificates on file pertaining to the current illness/injury.

    (b) Copy of applicant's attendance record applicable to this illness/injury.

    (c) Copy of record of any disciplinary action taken for abuse of sick leave.

****

ACTION BY A & R SICK LEAVE BANK COMMITTEE: ____________________

APPROVAL OF THIS APPLICATION FOR USE OF SICK
LEAVE BANK IS HEREBY GRANTED TO COMMENCE ON: ____________________

AND, UNLESS RENEWED, WILL TERMINATE ON: ____________________

Agency is authorized to compensate employee at the rate of one-half (1/2) day for each day of illness or injury up to a maximum of one hundred (100) days per contract year (July 1 through June 30). No vacation, sick leave, holiday or other paid leave benefits will accrue during the period applicant is receiving benefit hereunder.

FOR THE A & R SICK LEAVE BANK COMMITTEE:

DATE:

EDUCATION ADMINISTRATORS
(P-3A)
CONTRACT

between

State of Connecticut

and

Connecticut State Employees Association

CSEA

Effective: July 1, 1984 Expiring: June 30, 1987 pay to the beneficiary one-fourth of the deceased employee's daily salary for each day of sick leave accrued to his/her credit as of his/her last day on the active payroll, up to a maximum of sixty (60) days' pay.

Section Thirteen. Upon retirement all employees in the bargaining unit, including those covered under the Teachers Retirement System, shall be paid one-fourth of his/her daily salary for each day of sick leave accrued to his/her credit as of his/her last day on the active payroll, up to a maximum of sixty (60) days' pay.

Section Fourteen. Sick Leave Bank. Effective July 1, 1982 there shall be established an Emergency Sick Leave Bank to be used by bargaining unit employees who have completed the working test period. An eligible employee requesting use of emergency sick leave may make application on the prescribed form to a Labor/Management subcommittee established to administer the program. Said committee shall be comprised of four (4) designees, two (2) from the employer and two (2) from the Union, and shall have full authority to grant benefits and administer the program in accordance with the guidelines below or as mutually agreed to. Time off without loss of pay or benefits shall be granted to members of the subcommittee to attend meetings as necessary to administer the program.

(a) Each employee not in the working test period shall contribute one (1) day from accrued sick leave to the sick leave bank. Each new employee, subsequent to completing his/her initial working test period shall contribute one (1) day. Days contributed shall not revert to employees if not used. The employer will contribute fifty (50) days to initially fund this sick leave bank.

(b) Days contributed to the bank shall thereafter be allocated to bargaining unit employees with catastrophic or extended long-term illness.

(c) To be eligible for allocations of sick days from the bank, an employee must meet the following conditions:

1. Exhaustion of all sick leave, personal and vacation leave.

2. The illness or injury is not covered by Worker's Compensation and/or such benefits have been exhausted.

3. An acceptable medical certificate supporting the absence is on file.

4. The bank is not depleted.

5. Having completed the working test period.

(d) Benefits under this Article shall accrue at the rate of eighty (80%) percent per day for each day of illness or injury commencing with the sixteenth day after exhaustion of leave or Worker's Compensation as outlined above. No employee shall be eligible to draw from the bank more than once per contract year, more than one hundred (100) days per year of illness, or if the fund is depleted. Employees receiving benefits under this Article shall not accrue vacation or sick leave during the period of eligibility or be eligible for holidays or other paid leave benefits. The sub-committee shall consider as a factor the extent and circumstances of the applicants usage of sick leave prior to the illness in question.

(e) Unused days in the sick leave bank shall be carried over from year to year and shall not lapse.

(f) If at any time the bank should be depleted, each eligible employee shall be assessed one day from his/her accrued sick leave.

(g) An employee who has been granted some portion of the sick leave bank, and who returns to work full-time, shall re-pay the bank at the rate of twenty (20%) percent of his/her unused accrued sick leave at the end of each calendar year.

(h) The actions or non-actions of this sub-committee shall in no way be subject to collateral attack or the grievance/arbitration machinery. The sub-committee shall not be considered a State agency, board or any other subdivision of the Employer. No requests shall be conducted as contested cases or otherwise be subject to the Administrative Procedure Act.

ARTICLE XXXV
MISCELLANEOUS

Section One. The parties will cooperate in arranging for the most economical and expeditious printing of this Agreement in booklet form and will share the cost of same.

Section Two. Except where varied in this Agreement, the employer will continue in force its written rules and regulations with reference to personal leave or other paid or unpaid leave of absence.

Section Three. References in this Agreement to "rules and regulations" refer to the "Blue Book," Regulations of the Personnel Policy Board effective July 1, 1975. Such references include all applicable General Letters and Q-Items.

Section Four. Civil Leave.

(a) If an employee receives a subpoena or other order of the Court requiring an appearance during regular working hours, time off with pay and without loss of earned time shall be granted. This provision shall not apply in cases where the employee is a plaintiff or defendant in the Court action.

(b) If a court appearance (not jury duty) is required as part of the employee's assignment or as a direct consequence of his/her official function, time spent shall be considered as time worked. If the appearance requires the employee's presence beyond his/her normal work day, all time beyond the normal work day shall be compensated for in accordance with Article XVIII.

Section Five. Military Leave. The present military leave policy shall remain in force, except that paid leave for military call-ups shall be limited to emergencies.

Section Six. Personal Leave. In addition to annual vacation, each appointing authority shall grant to each full-time permanent employee in the State service three (3) days of personal leave of absence with pay in each calendar year. Personal leave of absence shall be for the purpose of conducting private affairs, including observance of religious holidays and shall not be deducted from vacation or sick leave credits. Personal leave of absence days not taken in a calendar year shall not be accumulated.

Section Seven. Inclement Weather. No member of the bargaining unit shall be required to travel under unsafe conditions. In the event an employee is late because of hazardous weather conditions, he/she shall not be charged for such lateness.

ARTICLE XXXVI
RETIREMENT

The terms and conditions of the employee retirement plan are governed by the Pension Contract between the Connecticut State Employees Association and the State of Connecticut dated April 26, 1984 and as it may be modified or amended in the future, and which is incorporated herein.

P-3A SICK LEAVE BANK APPLICATION

Name ______________________________

Home Address ______________________________

Agency ______________________________

Division or Facility ______________________________

Class Title ______________________________

The applicant hereby authorizes access by the Sick Leave Bank Committee to any medical or personnel records necessary for action on this application. Applicant further certifies that he/she has carefully read the Sick Leave Bank Guidelines attached hereto, has received a copy thereof, and agrees to comply therewith.

______________________________ Signature of Applicant

______________________________ Date of Application

* * *

TO BE COMPLETED BY APPLICANT'S AGENCY PERSONNEL OFFICE; FORWARD TO PERSONNEL OFFICE, DEPARTMENT OF EDUCATION, WHERE APPLICABLE:

1. Has applicant completed the Working Test Period? ______________
2. On what date did/will applicant exhaust all sick leave? ______________
3. On what date did/will applicant exhaust all personal leave? ______________
4. On what date did/will applicant exhaust all vacation leave? ______________
5. Is the illness/injury compensable under Worker's Compensation? ______________
6. If the illness/injury is compensable under Worker's Compensation, has the Worker's Compensation benefit been exhausted? ______________
7. On what date did the illness/injury for which applicant is seeking sick leave bank benefits commence? ______________
8. On what date did/will applicant return to work? ______________

9. Date of eligibility for benefits ______________

10. Attach a copy of the applicant's attendance record for the last two years.

11. Attach a copy of any and all medical documentation pertinent to this application.

Completed by:

______________________________ ______________
Signature Date

****

ACTION BY SICK LEAVE BANK COMMITTEE: ______________________________

BENEFITS COMMENCE ON: ______________________________

UNLESS RENEWED, BENEFITS TERMINATE ON: ______________________________

FOR THE SICK LEAVE BANK COMMITTEE:

______________________ ______________________

______________________ ______________________

Date: ______________________

P-3A Sick Leave Bank Guidelines

Pursuant to Article XXXIV, Section Twelve of the P-3A Collective Bargaining Agreement, a Sick Leave Bank has been established to provide members of the bargaining unit with partial salary benefits during periods of catastrophic or extended, long-term illness. A committee has been established to administer the Bank and is comprised of two designees of the Employer and two designees of the Union. This committee is not an agency, board or other subdivision of the State of Connecticut. The Committee's decisions are not grievable, arbitrable or litigable, and its actions are appealable only to the Committee. The Committee disburses no monies and has no authority to disburse monies. These guidelines will be reviewed by the Sick Leave Bank Committee on a yearly basis.

An employee may be eligible to receive benefits from the bank when:

1. He/She has completed the Working Test Period;
2. He/She has exhausted all sick, personal and vacation leave and has been off the payroll for fifteen days;
3. The illness/injury is not compensable under Worker's Compensation or such compensation benefit has been exhausted; and
4. Acceptable medical documentation has been submitted to substantiate eligibility to receive benefits.

Applications for benefits from the Bank will be handled on a first come, first served basis with approval of benefits retroactive to the first day or eligibility. Applications for benefits must be filed within a reasonable period of time (absent extenuating circumstances, a reasonable period of time shall be deemed to be thirty calendar days from the exhaustion of all leave balances or Worker's Compensation benefits).

The applicant acknowledges that he/she will remain liable for all proof necessary to qualify for the benefits sought and that he/she understands that no application will be considered unless he/she has agreed to comply with the terms and conditions of the Sick Leave Bank as specified in the collective bargaining agreement or as established by the Sick Leave Bank Committee.

The Committee reserves the right to request such medical evidence as it deems necessary to consider the application and/or to evaluate the continuing need for benefits. To justify eligibility for benefits, an applicant with a diagnosed psychiatric or psychological condition or disorder must submit a report from a certified and practicing psychiatrist, a licensed psychologist or a physician. The Committee further reserves the right to require a second medical opinion concerning the illness/injury. If a second opinion is requested, the applicant has two options for securing same. He/She may agree to be examined by a State physician, in which case the applicant will not be liable for the cost of said examination, or he/she may choose to see a physician of his/her choice, in which case the applicant shall be liable for any costs in connection therewith.

Peter
This is
now 80%

Benefits from the Bank may be granted to an applicant no more than once per contract year and are payable at the rate of ~~one-half~~ day of compensation per day of illness/injury to a maximum of one hundred half-days of compensation from the Sick Leave Bank. While an employee is receiving benefits, he/she shall not accrue vacation or sick leave and shall not be eligible for other paid leave benefits. Benefits may be discontinued at the discretion of the Committee; reasons for such action may include, but shall not be limited to: cessation of eligibility, failure to provide required medical documentation, termination of employment, demise of applicant or depletion of the Bank. Benefits may also be discontinued when, in the opinion of the Committee, it has been demonstrated that the intentional conduct of the applicant has prolonged, worsened or in fact caused the illness/injury for which benefits are sought.

Applicant agrees that repayment to the Bank will be made upon return to full-time work at the rate of twenty percent of his/her unused/accrued sick leave at the end of each calendar year.

P-3A Sick Leave Bank Criteria

Catastrophic and extended, long-term illness is intended to mean an illness/injury which will incapacitate the employee for more than forty-five consecutive calendar days and is of such a nature that the employee could not have had foreknowledge of it or been able to prevent or lessen the impact of it.

In considering an application for benefits, the Committee will examine the applicant's sick leave record for the prior two years.

Approval of benefits is retroactive to the first day of eligibility if the application for benefits was filed within a reasonable period of time (which, absent extenuating circumstances, shall be thirty days from exhaustion of all leave balances or Worker's Compensation benefits). Extenuating circumstances will be considered on a case by case basis.

The initial grant of benefits from the Bank will be for a maximum of twenty ~~half~~-days of compensation. An extension of benefits will be based on current medical documentation provided to the Committee by the applicant. In no case will benefits be granted beyond the date the physician certified the employee is able to return to work.

P-3A Sick Leave Bank Procedures

The appropriate portion of the application form will be completed and signed by the employee, whereupon it will be forwarded to the Agency's Personnel Director who will have the remainder of the application completed and forwarded with the required documentation to the Director of the Office of Management and Budget of the State Department of Education. Said Director will have it copied and forwarded (marked confidential) to the members of the Sick Leave Bank Committee, concurrently contacting them to establish a mutually convenient time to meet to consider the application. Such meeting shall take place no later than thirty calendar days after receipt of the application and the requisite documentation.

At any meeting to consider applications, at least three members of the Committee must be present. Applications will be considered in chronological order according to the date received by the Personnel Director.

There must be three affirmative votes in order to award benefits from the Bank to an applicant. After a decision has been made on an application, the Committee will notify the applicant in writing, with a copy to the Personnel Office of applicant's employing agency/facility. The employing agency/facility will then follow the necessary procedures to return the applicant to the payroll.

At each meeting, previously adjudicated applications will be reviewed to determine if applicant's situation warrants extension of benefits beyond the initial grant of twenty ~~half~~-days of compensation from the Sick Leave Bank, in which case notice will be sent to applicant and employing agency/facility.

The Personnel Office of the Department of Education will maintain a record of the balance of days in the Bank and will report it on a monthly basis to the Committee.

P-3A Sick Leave Bank

Reasons for Denial of Benefits

1. The applicant has not completed the Working Test Period.
2. The applicant has not exhausted all leave balances.
3. The applicant has not exhausted the Worker's Compensation benefits.
4. The applicant has not completed the fifteen day waiting period.
5. The applicant has not provided the required medical documentation.
6. The Sick Leave Bank has been depleted.
7. The illness/injury is not of a catastrophic or extended, long-term nature.
8. There is evidence of prior abuses of sick leave.
9. The applicant failed to apply for benefits within a reasonable period of time.
10. The applicant by his/her intentional conduct has prolonged, worsened or caused the illness/injury for which benefits are sought.
11. The applicant has terminated his/her employment with the State of Connecticut at the time the application for benefits is considered.

STATE OF CONNECTICUT
PERSONNEL DIVISION
DEPARTMENT OF ADMINISTRATIVE SERVICES
STATE OFFICE BUILDING HARTFORD, CONNECTICUT 06106-1630

MEMORANDUM

June 19, 1987

TO: PERSONNEL DIRECTORS

FROM: Sandra Biloon, Director of
Personnel and Labor Relations

Sandra Biloon

RE: Management Personnel Policy 86-2 AMENDED

The attached Management Personnel Policy 86-2 has been amended to eliminate the word "payroll" in Item No. 3.

The change allows for the donation of leave time to occur within the Managerial and Confidential ranks on the MP Pay Plan throughout the entire agency rather than by individual payrolls.

Please contact Bruce Chamberlain if you should have any questions.

SB/a
attach.

An Equal Opportunity Employer

DATE: June 9, 1987

MANAGEMENT PERSONNEL POLICY NO. 86-2 Amended

SUBJECT: Donation of Leave Time

In accordance with Connecticut General Statute 5-200(r), the Commissioner of Administrative Services with the approval of the Secretary of the Office of Policy and Management has extended the following benefit to all Managerial and Confidential employees on the MP Pay Plan.

Managerial and Confidential employees on the MP Pay Plan will be allowed to donate vacation and personal leave accruals to other Managerial and Confidential employees on the MP Pay Plan who are absent as a result of a long-term illness or injury.

1. The absent employee must have a minimum of five (5) years of State service.
2. The absent employee must have exhausted all of his/her accrued paid time and otherwise be on leave without pay status.
3. The request to the Agency Head should include:
   a) the names of employees who are willing to donate;
   b) the number of days of vacation and/or personal leave being donated by each employee; and
   c) the name of the employee to whom the leave time is being donated.
4. Donation of vacation and personal leave may occur only within the Managerial and Confidential ranks on the MP Pay Plan and only within the same agency.
5. Donation shall be made in minimum units of one day (or the equivalent hours) only.

6. Requests to donate vacation and personal leave shall be forwarded to the Director of Personnel and Labor Relations along with:

    a) the absent employee's official job classification;

    b) the absent employee's length of service;

    c) the absent employee's sick leave record for the current and previous year;

    d) the current medical certificate stating the nature of the illness and the prognosis.

7. The Director of Personnel and Labor Relations shall review all requests and notify the agency of approval (or denial).

8. If the request to donate vacation and/or personal leave is approved, the donated days will be transferred to the sick leave account of the absent employee. The actual transfer will occur on the date upon which the absent employee exhausts all accrued leave time.

9. The absent employee may use the days in the same manner as any other sick leave, including the "pay-off" of previously advanced sick leave days (as provided in Regulation 5-247-5).

Sandra Biloon, Director of
Personnel and Labor Relations

STATE OF CONNECTICUT
PERSONNEL DIVISION
DEPARTMENT OF ADMINISTRATIVE SERVICES
STATE OFFICE BUILDING HARTFORD, CONNECTICUT 06106-1630

June 24, 1987

TO: AGENCY PERSONNEL AND PAYROLL ADMINISTRATORS

FROM: Peter C. Rozantes, Section Chief
DAS/Personnel Division

SUBJECT: Office of Labor Relations General Notice 86-4,
Donation of Leave Time, Amended Notice.

Our Office of Labor Relations has issued an amended General Notice 86-4 which contains one minor but important change. Donation of leave time may now be made within the same agency and is no longer limited to the same agency/payroll. For example, donations of vacation and personal leave may now be made from all constituent units of the Department of Mental Health. Previously, the donations could only be made from a specific payroll unit within the Department of Mental Health such as Norwich Hospital.

The documentation of donations and the accurate addition and subtraction of leave balances is a critical part of this process. Agencies should make a concerted effort to correctly implement this process.

Peter C. Rozantes
Section Chief

PCR/aeg
Attachment

An Equal Opportunity Employer

STATE OF CONNECTICUT
PERSONNEL DIVISION
DEPARTMENT OF ADMINISTRATIVE SERVICES
STATE OFFICE BUILDING HARTFORD, CONNECTICUT 06106-1630

June 9, 1987

OFFICE OF LABOR RELATIONS

General Notice 86-4 (Amended)

TO: Agency Labor Relations Designees

FROM: Peter W. Allen, Labor Relations Operations Manager

SUBJECT: Donation of Leave Time

* * * * * * * * * * * * *

The State and several unions have reached agreement in the following bargaining units, to a provision which will allow employees to donate vacation and personal leave accruals to a fellow bargaining unit employee who is absent as a result of a long term illness or injury.

CEUI	NP-2	Maintenance and Service
AFSCME	NP-3	Administrative Clerical
AFSCME	NP-4	Corrections
PSEC	NP-5	Protective Services
1199	NP-6	Paraprofessional Health Care
1199	P-1	Professional Health Care
AFSCME	P-2	Social and Human Services
CSEA	P-3B	Education Professions

The following guidelines and procedures shall apply to the implementation of this benefit.

1. The PSEC, 1199 and CSEA agreements require that the absent employee have a minimum of five (5) years of State service. The CEUI and AFSCME agreements specify permanent status and six (6) months of service.

2. The absent employee must have exhausted all of his/her accrued paid time and otherwise be on leave without pay status.

3. A request to donate vacation and/or personal leave time may be initiated by the union or a group of employees; it should not generate from management. The request should be directed to the agency/facility head or designee.

4. The request should include: a)the names of employees who are willing to donate; b) the number of days of vacation and/or personal leave being donated by each employee, and c) the name of the employee to whom the leave time is being donated.

An Equal Opportunity Employer

5. Donation of vacation and personal leave may occur only within the same bargaining unit and only within the same agency.

6. Donation shall be made in minimum units of one day (or the equivalent hours) only.

7. Requests to donate vacation and personal leave shall be forwarded to the Director of Personnel and Labor Relations along with:

a) the absent employee's official job classification;

b) the absent employee's length of service;

c) the absent employee's sick leave record for the current and previous year;

d) the current medical certificate stating the nature of the illness, the prognosis and the probable date when the employee will return to work.

8. The Director of Personnel and Labor Relations shall review all requests for compliance with the applicable collective bargaining agreements and notify the agency of approval (or denial).

9. If the request to donate vacation and/or personal leave is approved, the donated days will be transferred to the sick leave account of the absent employee. The actual transfer will occur on the date upon which the absent employee exhausts all accrued leave time.

10. The absent employee may use the days in the same manner as any other sick leave, including the "pay-off" of previously advanced sick leave days (as provided in Regulation 5-247-5).

Questions should be directed to the Administrative Services Division at 566-3236.

Peter W. Allen

Peter W. Allen
Labor Relations
Operations Manager

PWA/aeg

QUESTIONS SUBMITTED BY SENATOR PRYOR
TO THE STATE OF CONNECTICUT

1. You are in the unique position of having experience with both a donation and leave bank program. What do you most attribute to the success of each of the programs?

2. Although your leave bank uses sick leave instead of annual or vacation leave; in concept, your bank appears to address many of the issues that we are trying to cover in our voluntary leave bank bill.

   a. What problems, if any, have you encountered in implementing the leave bank concept?

   b. Has the Labor Management Subcommittee had difficulties determining who is most in need of the leave? What criteria do they use to determine appropriate need?

   c. Do employees readily donate their leave? If not, do employees solicit others to donate leave? Can a donor designate a recipient?

   d. Has the bank ever run out of leave? If so, how was that handled?

   e. Are recipients of leave made public? What, if any, reporting is done so that donors know how their donated leave was distributed?

3. Under your donation program, some people must get more than others.

   a. How can you insure that the most needing the leave receive it?

   b. Are employees actively solicited to donate leave?

   c. How does an employee who wishes not to have his/her medical circumstances made public receive leave?

   d. Are there limitations to the amount of leave an individual may use or receive under the donation program?

4. Other than the one advantage to the leave bank concept you stated in your prepared remarks, what other advantages or disadvantages do you see with each method?

5. It appears that both leave programs came about as a result of collective bargaining. Given the experience you have had thus far, do you plan to expand it to all employees? If not, why not?

STATE OF CONNECTICUT
DEPARTMENT OF ADMINISTRATIVE SERVICES
PERSONNEL DIVISION
STATE OFFICE BUILDING HARTFORD, CONNECTICUT 06106-1630

April 5, 1988

Senator David Pryor
United States Senate
Committee on Governmental Affairs
Subcommittee on Federal Services, Post Office, and Civil Service
Washington, DC 20510-6250

Dear Senator Pryor:

This is in response to the additional questions you asked regarding our experience with sick leave banks and donation of accumulated leave procedures.

Question #1.

Both programs have been successful in Connecticut because employee groups and their representatives have worked with management to ensure success.

Question #2.

a. None. Once implementation was negotiated, we have not experienced any problems.

b. There have not been any disagreements determining the need for the leave. The standards require that there be a serious illness and that the employee requesting such a donation not be disciplined for excessive use of sick leave in the prior two years.

c. Under our two sick leave bank agreements, members of the bargaining units must donate to the sick leave bank. Donors cannot specify a recipient since that decision is made by the Labor-Management Subcommittee. Also, there is no solicitation of donations under our sick leave bank.

d. The Administrative and Residual bank was originally provided with 35,000 hours of leave, 2,000 hours by management and the remainder by employees of the bargaining unit. Donations amounted to one day per bargaining unit employee per year for two years. The bank must be replenished by donations by bargaining unit employee if it is reduced to less than 12,000/hours. Each employee will then donate one day of sick leave per year to bring the bank up to the required level. With 3,000 members in the bargaining unit, a donation of one day (7 hour day) would provide the bank

An Equal Opportunity Employer

with an additional 21,000 hours. While there has not been a need to replenish the bank yet, I would expect that there will be a need to do so by 1989.

e. The union newsletters sometimes publicize those who have used the sick leave bank successfully. Discussions with union representatives have indicated that permission was gained from the employee prior to publishing the information.

Question #3.

a Management in Connecticut plays a neutral role in the donation program. Some employees have received more donations than others.

b. Co-workers and unions have publicized the plight of an ill co-worker but we have not seen active solicitation take place.

c. Unless co-workers are aware of the need, the donation programs would not provide donations. Co-workers typically must know the nature of the illness in order to judge whether or not they will donate. I believe that donations have been provided where the nature of the disease is provided but not the specific details, i.e. Cancer is identified as the disease but not the specific area affected by the cancer.

d. No. All donations are received by the employee and maintained as part of their accruals. If the employee returns to work prior to using all of the donated time, it is retained by the employee, not returned to the donors on a pro-rated basis.

Question #4.

The advantage to the sick leave bank concept is that it can provide a greater amount of time to a seriously ill employee. The donation process could provide additional donations if donations would be allowed from within the complete bargaining unit across agency lines. We have always been uncomfortable in using sick leave to "stock" the sick leave bank. We would have been much more comfortable with a bank procedure which was established with vacation or personal leave. Essentially, this would combine the best of both systems in Connecticut.

Question #5

We utilize the two programs for approximately 35,000 employees including our 2,000 managerial and confidential employees. Those not covered by either plan are employed within the Legislative and Judicial Branches of Connecticut's State Government where we do not have jurisdication. The only major occupational group not covered within the Executive Branch are professional higher education employees. These are primarily tenured faculty positions and there has not been an interest in using either process. Tenured faculty are covered by our collective bargaining legislation and they have had negotiated contracts since 1977. We certainly would consider either a bank concept or a donation concept but we would insist that it be utilized only for serious illness and not to cover an employee who had abused sick leave in the past.

Please contact me if you need any additional clarification.

Sincerely,

Peter C. Rozantes
Section Chief

PCR:VMS

TESTIMONY FOR THE HEARING

Before the

UNITED STATES SENATE

Committee on Governmental Affairs

Subcommittee on Federal Services, Post Office, and Civil Service

March 18, 1988

Sick Leave Banks, Leave Sharing, and S. 2140

Miriam K. Cameron, Director
Department of Employee Assistance Services
Montgomery County Public Schools
Rockville, Maryland 20850

INTRODUCTION

Mr. Chairman, members of the committee, fellow presenters, and guests, good afternoon.

I appreciate being with you today and having an opportunity to testify. My name is Miriam Cameron, and I am the director of the Department of Employee Assistance Services for the Montgomery County Public Schools. I would like to note, however, that I am speaking today as an individual and as an employee assistance professional, not as an official representative of the public schools.

Today's hearing gives me the opportunity to thank members of Congress, the Federal Government, and the National Institute on Alcohol Abuse and Alcoholism and the Eugene and Agnes E. Meyer Foundation for pilot project grant funds and seed grant monies that were essential to the implementation of the Employee Assistance Program in the Montgomery County Public Schools.

Our MCPS Employee Assistance Program (EAP) was begun in 1975. To our knowledge it was the first such program in public education in the country. My testimony today on sick leave banks is based on 14 years of experience in employee assistance and my own personal use of bank grants in the last 17 years.

I will comment today primarily on sick leave banks rather than leave sharing. I have had little experience with the latter, and I have some philosophical concerns about the direct voluntary leave transfer program as proposed by Senator Dominici in S. 1595. I will address these concerns in later testimony.

My experience in working with the sick leave banks goes back to 1975 when the first clients were referred for assistance. The enormous value of the sick leave bank for the metally ill, physically abused, and drug/alcohol addicted clients was immediately apparent. On reflection, I realize that the entire structure of the department and the services we can offer clients are integrally related to the negotiated sick leave package and the sick leave banks.

DEMOGRAPHICS

Montgomery County Public Schools (MCPS), Rockville, Maryland, is a school district covering 500 squares miles just north of Washington, D.C. It serves 96,500 students and has 164 schools and 13,500 employees. For the 1987 tax year, the Division of Payroll mailed 18,072 IRS W-2 Forms. This figure is a more accurate reflection of the employee population in that it includes temporary, part-time, and full-time employees.

BASIC SICK LEAVE

Sick leave in MCPS is allocated to all employees at the rate of one duty day per month. A "duty day" is defined by the position held; for example, four, six, or eight hours can all equal "one duty day." The following are general characteristics:

> Twelve days sick leave per year is the maximum.
>
> Sick leave is advanced at the beginning of each fiscal or work year.
>
> There is no ceiling on the number of sick leave days that can be accumulated.

Additional sick leave beyond the 12-day-per-year allocation is acquired in the following manner:

> Annual leave in excess of 20 days at the end of the fiscal year (June 30) is rolled over to the sick leave balance.
>
> Unused personal leave, allocated at the rate of three days per year, is rolled over to the sick leave balance at the end of the fiscal year.

In effect, then, there is no use-it-or-lose-it policy, as with some agencies, unless one considers the fact that at the point of retirement, sick leave is worth substantially less than annual leave.

Unused sick leave at time of retirement is worth one-fourth of its dollar value. In addition, unused sick leave may be applied to retirement for months of service, but only as an add-on, not as a means of qualifying for retirement.

Employees who exhaust their sick leave may draw on either of two alternatives. One is extended sick leave; the other is a sick leave bank. Each is limited to use by the employee for personal illness. Neither is available for illness in the immediate family.

EXTENSION OF SICK LEAVE

Extended sick leave preceded the development of the sick leave banks. It is a grant at three-quarters pay, donated by the Board of Education, on the request of the employee, with approval of the Department of Personnel Services and with proper medical certification. The following features are notable:

> Extended sick leave is available to all employees.
>
> Employees are not liable for extended sick leave grants.

For those employees who are members of a sick leave bank and who have exhausted their accumulated sick leave, additional sick leave would normally be covered by the bank, at full salary.

However, for those employees who do not join a sick leave bank, who may be ineligible to join, or who have not satisfied the required waiting period for bank grants, the three-quarters pay sick leave option is a significant benefit. It is only available, however, as a last resort type of help when medical problems are long term. Illness excluded for coverage by the restrictive rules of a bank may be covered under this option.

Grants for extension of leave are limited to 30 duty days per grant. By convention, not more than two such grants are approved, for a maximum of 60 duty days per medical emergency. Additionally, the total number of days granted may depend on the years of service with MCPS and the record of one's work performance, as well as the urgency of the need.

SICK LEAVE BANKS

There are four sick leave banks in MCPS. Three are under the primary jurisdiction of the three bargaining units, and one has recently been made available by the Board for those employees who by virtue of their positions are ineligible to be members of any of the bargaining units. There are more similarities than differences; however, a few of the differences are notable.

Statement of Intent

The purpose of the banks is to provide sick leave to the contributors after their accumulated sick leave has been exhausted and, more specifically, to provide such leave from the bank in cases of catastrophic illness.

Common Characteristics

The following characteristics are common:

Membership is voluntary.

Membership is restricted to persons who are or could be members of that bank's negotiating unit.

Membership is **not** contingent on being a member of the negotiating unit.

Only sick leave (not annual or personal leave) may be donated to the bank.

Assessments are determined by the bank and made annually.

One day of sick leave per year is the normal assessment.

Leave is granted for personal illness of the bank member.

Leave for illness in family is excluded.

Workman's Compensation cases are excluded.

Leave grants cannot exceed 30 duty days per request.

A physician's statement is required.

Requests for leave beyond 30 duty days may require a "second opinion" by a physician of the bank's choosing and at the member's expense.

A committee of three, one of whom must be a member of the Department of Personnel Services, administers each bank and determines eligibility.

Determination of eligibility is normally made within 12 working days of the receipt of a request.

The MCPS Division of Payroll maintains records of all employee contributions and withdrawals and the status of the bank.

Significant Differences

Montgomery County Council of Supporting Services Employees (MCCSSE) (1972)

This bank services all supporting staff. It was the second to be established, and it is the most restrictive in its benefits, as seen in the following:

> Employees must have permanent status to join; normally this takes six months.
>
> Members may not use the bank during their first six months of membership. (When added to the above, new employees cannot draw on the bank for their first year of employment.)
>
> The waiting period is two consecutive compensible days after all sick leave is exhausted. (Personal or annual leave may be used during this period, if available.)

In practice, the following restrictions also apply:

> An employee must be or have been hospitalized to be eligible for a grant. (Alcohol/drug rehabilitation centers qualify as "hospitals.")
>
> Emergency room treatment without hospitalization may qualify a member for a grant not to exceed 20 days.
>
> A maximum of no more than 90 days will be granted annually.

Montgomery County Education Association (MCEA) (1971)

This is the largest and oldest MCPS sick leave bank. Established in 1971, it serves all the professional staff with the exception of administrators and those who are excluded from any bargaining unit. Historically it has been very liberal with its leave grants. Restrictions are minimal as noted in the following:

> There is a waiting period of five consecutive compensible days after all sick leave has been used. (Personal or annual leave may be used if available. Most members of this bank are ten-month employees and have no annual leave.)

> There are maximums of 240 days, unless there is an earlier decision that the member will never return to work. There is additional leave up to 120 days if a member has exhausted the above and returned to active duty for one year. There is a lifetime maximum of 360 days.

Montgomery County Association of Administrative and Supervisory Personnel (MCAASP) (1985)

Excluded Employees (EE) (1986)

These two banks are almost identical. Their combined eligible membership is less than 650 employees. For that reason the Board of Education gave an initial one-time-only start-up grant of 250 days sick leave to the MCAASP bank and 161 days to the EE bank.

Restrictions are minimal:

> An applicant must have exhausted all sick **and** personal leave.
>
> No maximums are identified.

SHARED LEAVE

Shared leave is rarely approved for MCPS employees.

In one recent situation, approval was granted for donations for a new employee whose colleagues offered contributions of sick, annual, or personal leave days. However, this was based on a humanitarian appeal directly to the superintendent and is not common practice.

With the availability of extension of sick leave at three-fourths (3/4) pay and the four sick leave banks at full pay, shared leave requests are unusual and routinely disapproved in MCPS.

Shared leave through voluntary leave transfers to an identified individual is deemed undesireable for the following reasons:

> It destroys the philosophy of "saving for a rainy day," a concept encouraged by sick leave banks.
>
> It can be discriminating, abused, and biased.

It can create undue emotional hardships and conflicts for both the donors and recipients.

It violates personal privacy: the needy, the poor, the proud, the shy, the seriously ill, and the stigmatized (the mentally and emotionally ill, persons with AIDS, addicts, alchoholics, victims of abuse, and others) may be reluctant to share their problems or their shame and to ask for help.

If shared leave coexists with sick leave banks, it could reduce bank membership, making the latter more costly.

It is expensive and complex to administer.

Personal Comments

Given the range of options available to MCPS employees, I believe shared leave should not be an option, except for those unique circumstances where no other leave or combination of leaves would apply. Until our policies change, leave for illness in the family would be the primary example.

Given the AIDS epidemic, and the average time of 18 months from diagnosis to death, shared leave should not be excluded from consideration. However, given the privacy concerns and other issues above, I believe shared leave should only be a second line defense with voluntary sick leave banks as the primary source of self-insurance coverage for extreme or prolonged medical emergencies.

USES AND ABUSES OF SICK LEAVE BANKS

Although abuse of sick leave banks is uncommon, it can occur.

The examples that follow are typical of abused bank grants known to me. All names are fictitious, and details are composite and generic rather than specific to any one case. The identified abuses, if any, are a matter of conjecture and subject to rexamination.

ANDREW: Professional; Diagnosis: AIDS

Andrew had begun working in a new position when, following a bad cold and a bout of pneumonia, he learned that he had pneumocystis carinii, a diagnosis for AIDS. He requested that he be allowed to return to his former position because he knew the work and felt that he would be more comfortable there. Although physically and mentally able to work, Andrew was placed on sick leave for an extended period of time. He was not permitted to return to work in any capacity until appropriate policy decisions had been made.

When the decisions were made, Andrew was deemed eligible to return to work. Unfortunately, many of his most productive months were lost during this period of sick leave. His illness progressed. He spent several months in his new assignment and several weeks in the hospital before he died.

Use and Abuse

Andrew was not only the victim of a tragic disease but also one who bore the brunt of lack of knowledge about the implications of his disease in the work site, lack of organizational policy, the political realities of the time, and organizational fears of public reaction. One could argue that denying him the right to work when he was medically able to work was an abuse of his rights, and an abuse of the use of sick leave and the sick leave bank. However, an equally cogent issue, is the one we are discussing today. Could Andrew have managed as well as he did without the sick leave bank? Could he have managed at all?

What this case does illustrate, though, as we move more and more into the "Age of AIDS," is the critical need for organizational policy and the urgent need for alternative support systems for persons with AIDS. Andrew was fortunate in that he only sustained a modest loss of income during his terminal illness.

However, as the number of AIDS persons increases (and concomitantly, the number of persons with family members with AIDS), the need for sick leave banks or shared leave plans increases. Yet, at the same time, the drain on the sick leave banks could be enormous.

ROSELLA: Supporting Services; Diagnosis: Alchoholism

Rosella was referred to Employee Assistance for poor work performance and problems with her supervisors and peers. After several conferences, she was referred to an alcoholism treatment facility for rehabilitation. Rosella attended the aftercare program for a brief period and was spotty in her attendance at Alcoholics Anonymous. Within several months, she relapsed and was referred again to the EAP. A second period of rehabilitation was no more successful than the first.

Employee assistance staff supported stronger disciplinary action and would have supported termination. However, EAP was directed to continue working with Rosella. A third period of in-patient treatment followed. In addition, EAP wrote a tight therapeutic contract requiring her compliance with the terms and making her continued employment contingent on adherence to the contract and satisfactory work performance. Personnel supported the contract. Nevertheless, Rosella relapsed again.

Dismissal proceedings were begun. Rosella filed a grievance. Her union contended that the therapeutic contract was not valid and that the breach of that contract could not be grounds for dismissal. Despite her continued poor work performance, Rosella won the grievance on a technicality. Eventually, however, she was fired.

Use and Abuse

Rosella used almost 90 days of sick leave bank time for her three periods of rehabilitation. Insurance costs were in the range of $18,000 to $20,000. No substitutes were provided during her absences, thereby increasing the work load for her peers. In my opinion, the third treatment period was unwarranted and an unnecessary expense for the sick leave bank and MCPS.

BETSY: Professional; Diagnosis: Schizophrenia

Betsy was an extremely talented, attractive, articulate young woman. Her job performance was described as "erratic." Attempts to evaluate her effectively were fraught with problems because of her unpredictability. She was referred to the EAP by Personnel, with the recommendation that a psychiatric evaluation was in order.

After a particularly stormy session on the job, Betsy dashed to Personnel and precipitously resigned. EAP staff requested a hold on the resignation and recommended long- term sick leave and disability retirement instead. The rationale was that Betsy was a very ill woman who would need medical insurance coverage for the rest of her life. Such coverage was available under disability retirement.

Betsy was covered by the sick leave bank for seven months until she was eligible for disability retirement. She was only 35 when she retired.

Use and Abuse

Schizophrenia is a catastrophic illness. Betsy's condition has deteriorated substantially over the years. At one point she was diagnosed as being both homicidal and suicidal. The sick leave bank grant gave her the needed time to be eligible for disability retirement, a small pension, and access to group rates for health insurance. Had this not been the case, she could well be numbered among the homeless.

HANNAH: Supporting Services; Diagnosis: High Blood Pressure, Obesity, and Stress, plus Illness in the Family: Cancer and Alzheimer's Disease

Hannah is a veteran employee whose job involved the safety of children. The primary cause of her high blood pressure and inordinate stress level was her husband's illness. His erratic behavior, intermittent tendency to violence, and memory lapses made her fearful of him and concerned for his well-being. She tended to compensate for her high levels of anxiety by overeating.

Hannah felt it was unsafe to leave her husband home alone. Paid sick leave for illness in the family was not available for any extended period of time. Hannah was not a member of a sick leave bank; but had she been, sick leave for illness in the family would have been denied.

With the knowledge and approval of Personnel, EAP staff recommended that Hannah get a doctor's certificate for her own medical problems and apply for an extension of sick leave at three-fourths pay through the Board of Education. The leave was approved, and Hannah was able to stay home with her husband and make arrangements for his care. Although finances were tight, there was a significant reduction in her own stress level. She even took pride in losing some weight. The safety of the children under her care was assured. Hannah believed that this leave "saved her life." She returned to work after her husband was admitted to a nursing care facility.

Use and Abuse

Although the primary problem in this case was illness in the family, the effect of that illness on the employee was sufficient to warrant the action taken. More significantly, though, this case serves to illustrate the fact that illness in the family can be as critical as personal illness. Whereas MCPS employees do not have significant coverage in this area, all of the federal proposals, to their credit, acknowledge that need.

JOAN: Professional; Diagnosis: Unknown

Joan is a very talented, somewhat tempermental teacher. For the most part, her work record has been good to excellent. Her relationship with her supervisors has been mixed. Joan claims that she loves teaching. The glitch is that "her way is the only way," a factor that puts her at odds periodically with her principal. Joan claims that she is being harrassed.

According to her principal, Joan seems to be subject to mood swings. Discrepancies in reporting have been noted by EAP staff. Inappropriate classroom behavior, tardiness, and outbursts against other staff have been reported by the principal. Joan feels the situation has reached the point that she can no longer tolerate being in the school. The principal agrees that she should leave. The question is, where does she go?

Joan also has some medical problems that have been exacerbated by the work situation. On the advice of the EAP staff, Joan met with her physician and applied for a sick leave bank grant which was approved. At the present time, Joan is on leave doing volunteer work in a related field. This activity will not compound her medical problems. It may, in fact, enhance her opportunities for the future.

Use and Abuse

Joan's medical problem is occupationally and emotionally related. However, the trigger point for her going on leave was the difficulty she was having with her principal. Leave at this point of a crisis is not uncommon for teachers seen by the EAP.

Whether the problems could have been resolved on site is unknown. Joan claims she loves teaching; yet, she is considering leaving the field. While on sick leave she will be exploring other options.

Personal Comments

Although Joan is doing volunteer work, others on sick leave have been known to have jobs or go to graduate school. There's a fine ethical line here, particularly if there's a diagnosis of depression. It would be medically inadvisable for a depressed person to stay at home all day and get more depressed. Graduate school or a supplemental job could be quite therapeutic. And for some employees, it has been.

However, in my opinion, the potential for "double dipping" could and should be eliminated by recognizing the need for alternative outlets and requiring that income earned while on fully paid sick leave, or three-fourths pay extended leave, be returned to MCPS. Adjustments in the amount returned would need to allow for the tax consequences of the additional earnings.

Joan's case is very typical of clients seen by the EAP. At this time, MCPS has no leave that would cover the teachers, school-based secretaries, and other ten-month employees who are so stressed out that they need to get away for a period of time. Unlike twelve-month employees, they have no annual leave and no escape hatch. Some would willingly settle for a brief leave option without pay. Lacking that as a choice can lead to additional drain on the sick leave bank for stress-related problems.

THE POSITIVES

As a presenter, I was asked to identify abuses, if any, of sick leave bank grants. I would be remiss were I to say there have been none. However, "abuse" is a judgement call; and the primary responsibility for protecting against abuse rests with each of the banks. Perhaps it is significant to note that the bank rules have changed over the years. The procedures currently employed are remarkably similar to those proposed by Senator Pryor in S. 2140. In the aggregate, **abuse of bank leave is miniscule.**

This program has been an enormous benefit to employees in times of crisis. I can attest to that not only from my own use of the MCEA bank when I was eligible to be a member of that unit but also from our experience working with literally thousands of people who have come through the Department of Employee Assistance.

If one has never known the security of being a member of such a program, then its absence may not be missed. Six years ago, though, the MCEA membership voted to exlude all members who were administrators. Although I had been a member for many years and, in fact, joined because I was so appreciative of a sick leave bank grant, I, along with about 450 others, was voted out--out of MCEA **and** out of the sick leave bank.

For the next three years, our group had no coverage. For me, disability income insurance was not a viable option. Newly single after a 28-year marriage, I could not afford the individual policies available. Further, I doubted that I would medically qualify. During that period there was a disconcerting "what if something happened" cloud that dissipated the moment I joined the new MCAASP bank.

I share this because in MCPS we have become accustomed to knowing that no matter what happens, we are covered. In my position, for example, the banks are essential to working effectively with employees with the whole gamut of human problems. And in a limited number of cases, when ordinary disability retirement seems in order, employees can usually remain on bank grants, if they have exhausted their leave, until disability retirement is approved by the state. Normally this take about three months.

Disability retirement for most clients is an emotional setback, regardless of how genuine the need. Without exception, it spells the end of a career. Being on paid leave helps not only financially, also emotionally. There's a dignity about the process. Dignity is the bottom line.

ADMINISTRATION OF THE BANKS

Since each bank (with the exception of Excluded Employees) is part of the negotiated agreement, the decisions regarding approval of requests and allocation of leave are administratively handled by each unit.

The MCPS Division of Payroll maintains records of all bank members' contributions and cancellations and reports such status upon the request of the bank committees. The data is impressive in terms of the number of days used, the number of employees who drew from the bank, and the surprisingly low estimated costs in staff time for MCPS. The FY 1987 costs in the chart that follows probably exceed actual costs, given the fact that the MCEA sick leave bank has a very small number of employees who are on the 12-month salary scale. (Please see the chart at the end of this document.)

S. 2140 Federal Employees Leave Bank Act

Senator Pryor's bill is remarkably similar to the sick leave banks in MCPS. It is notable in the fact that leave for illness in the family is included as well as personal medical emergencies. With the increasing numbers of employed females, single heads of households, and midcareer employees with aging parents, that is, the so-called "sandwich generation," a program such as this could set a national standard.

Incorporation of the concept that "an employee may state a concern and desire to aid a specified proposed leave recipient in the application..." (Sec. 6335.(a)(2) appears to cover some of the positive emotional benefits for the donors of leave under the current Office of Personnel Management Program. However, it is also the one item that appears to be directly tied to the Prohibition of Coercion section, Sec. 633[illegible]. To some extent, it also negates the privacy issues and could complicate the decision-making process of the Leave Bank Board.

The latter is well illustrated by Senator Pryor's preliminary remarks in the March 4, 1988, Congressional Record, where he states, "Judging from the great number of nominations OPM received and the extreme difficulty they had in choosing three cases out of the 242 qualified nominations, it is evident that a Federal leave transfer program is needed."

Senator Pryor's bill also eliminates three major flaws, from my perspective, in Senator Dominici's bill, S. 1595:

> The latter is discriminatory against those employees who work in units "to which an organization of Government employees has been accorded exclusive recognition," with respect to negotiated contracts. Although perhaps not intended, on the surface this appears to be an attempt at union busting. Especially given the powers to OPM under Sec. 6339 (b)(1) wherein "upon written request by the head of an agency, the Office of Personnel Management may exclude that agency...if the Office determines that inclusion...is causing substantial disruption to agency function."
>
> One might well ask the questions: Would any of the three recipients of shared leave grants have been any less deserving had they been in an excluded agency with a negotiated contract? Are agency heads and OPM excluded from the prohibition of coercion section, or just individual employees and unions?

By contrast, S. 2140 includes on the Leave Bank Board at least one member who represents a labor organization or employee group. The corollary to this in MCPS, where the banks are under the jurisdiction of the negotiating groups, is the inclusion on each bank of a representative from the Department of Personnel Services.

> Secondly, S. 1595 appears to be limited to voluntary leave transfers on a case-by-case basis. Given the fact that the need is so apparent, based on the initial 242 applications, the potential for excessive largess exists. With all due respect to the employees of DOT and the recipient of their kindness, no employee with 35 years of service, no matter how deserving, needs nor can use an additional 18 years of Federal leave time. The inherent inequity built into this plan will cause morale problems across the system.
>
> Administration of such a program over time will become inordinately complex. Further, it would seem to run counter to the Government's own policies pertaining to excessive paperwork, to say nothing of equal opportunity. Humanitarian programs and cost effective management do not need to be in conflict. It would be interesting to know, however, whether the Government has calculated the person-hours and costs that would be or will be incurred in returning the unused portion of the donated leave. It is not inconceivable that the costs will exceed that of an outright grant, had such an option been available.

Senator Pryor's introductory remarks on S. 2140 noted that "a leave bank system will minimize concerns about employee coercion and possible violations of gifts to superiors. It will also ease administrative burdens and overcome the most serious problem involved in a direct employee donation program, dealing with the restoration of unused leave. Furthermore, it affords the leave recipient some degree of privacy. All of which in my views weighs heavily in favor of the leave bank concept."

I agree.

This testimony was prepared on the request of Senator Pryor's staff. I hope that you will find this contribution useful to your committee's deliberations. I am pleased to share this information and to be with you today. Thank you for giving me the opportunity to testify. If I can be of any further assistance, please feel free to call on me or the staff of MCPS.

MCPS SICK LEAVE BANKS DATA FY 1987

RAW DATA	MCCSSE	MCEA	MCAASP	EE*	
				Prof.	Support
Number Eligible	5,972	6,941	409	41	133
Number Enrolled	3,516	5,610	286	23	30
Number Who Used Bank in FY 1987	104	187	3	0	0
Days/Hours Used in FY 1987	19,540 hours	4,938 days	35 days	0	0
Number of Person-hours for Payroll Administration	4 hrs/wk	6 hrs/wk	3 hrs/yr	2 hrs/yr	2 hrs/yr
ANNUAL SUMMARY DATA FY 1987					
Percent Enrollment	58.9	80.8	69.9	56.1	22.6
Percent Utilization by Membership	3.0	2.7	1.0	0	0
Percent Utilization of Annual Contribution	69.5	88.0	12.2	0	0
Cost of Administration at $12.00/hour	$2,946	$3,744	$36	$24	$24

Total Costs: $6,774. FY 1987 MCPS Budget: $476,127,288.

*Excluded Employees - These employees are excluded from joining the sick leave banks administered by the unions due to the confidential nature of their jobs. However, those employees who were already members of those sick leave banks before the ruling went into effect were allowed the option of remaining or changing, and many of them chose to remain in their original banks.

Department of Employee Assistance Services
MONTGOMERY COUNTY PUBLIC SCHOOLS
850 Hungerford Drive
Rockville, Maryland 20850

QUESTIONS SUBMITTED BY SENATOR DAVID PRYOR TO MIRIAM CAMERON DATED MARCH 24, 1988

1.a. What problems, if any, have you encountered in implementing the leave bank concept?

I was not involved in the implementation process when the first sick leave bank began in 1971. For information on this question, I'd suggest that you contact Mr. Jess R. Graham, Assistant Director, Department of Personnel Services, and Mr. Alfred B. Rico, Director, Division of Payroll. Both have been actively involved in the administration of the banks since their inception. Mr. Graham can be reached on 279-3361; Mr. Rico on 279-3571. Prior to the subcommittee hearing, one of my staff members followed through on four of my questions to Mr. Rico. Those notes are attached for your information.

1.b. Have the committees administering the banks had difficulties determining who is most in need of the leave? What criteria do they use to determine appropriate need?

To my knowledge this has not been a problem. Application for leave must be accompanied by a note from a physician, therapist, etc., and follows the format determined by the banks. In practice leave is not granted for short periods of illness or disability such as the flu, or a sprained ankle. Many employees, especially teachers, find themselves short of sick leave, and even though they are members of the bank, do not or cannot draw on the bank because their illness is brief and/or minor.

Each of the banks is run by a committee of three, one of whom must be from the Department of Personnel Services. The restrictions on the MCCSSE bank are far more stringent than the MCEA bank. This tends to narrow the decision-making process since persons must have been hospitalized or seen in the emergency room or sent to an alcohol/drug rehabilitation facility to qualify. Whereas it is not unusual for teachers to use the bank for stress-related and emotional illness, this is rarely a viable option for supporting services staff. In MCPS, as noted previously, the unions run the banks, so the unions can call the shots.

In one recent client case, I felt the MCEA bank committee made an inappropriate decision when they initially denied sick leave to a client of mine who had a broken foot. Their rationale was that she had a sedentary job and therefore could work. Not taken into consideration were her multiple other handicaps and her inability to care for herself during this period. Eventually her leave was approved based on additional letters, notes from the doctor, and an irate appeal from the client. There was a delay in her receiving salary, but the leave was approved.

For additional information on this question, I'd suggest that you contact the following persons directly:

Mr. Jess R. Graham, Assistant Director, Department of Personnel Services, 279-3621.

Mrs. Carol Bell, Chair, MCCSSE Bank, 762-7740.

Ms. Carol Bergen, Chair, MCEA Bank, c/o Montgomery Blair High School, 587-2700, or c/o MCEA, 881-5305.

Ms. Patricia Green, Secretary, MCEA Bank, c/o MCEA, 881-5305.

1.c. Do employees readily donate their leave? If not, do employees solicit others to donate leave? Can a donor designate a recipient?

Donation of leave is strictly voluntary and is done on an annual basis. Each bank has a standard form, see sample attached, completed by the employee. Once the initial donation is made, subsequent donations are automatic at the beginning of each fiscal year. There's a block on the paystub that identifies whether or not one is a member of the bank (see attached).

The primary flaw that I see in the system is the short period of time during which one can join the bank, and the relatively limited amount of publicity. Thus, some folks get caught short not having joined when they actually meant to. Others chose not to either because they have so much leave, or because they figure they will never need or use the bank. In the past, at the very beginning, there was some question about abusive use of leave through the banks, and some people withdrew. That has been corrected, and now the trend is to join to help out the bank and one's fellow employees as well as oneself.

To my knowledge, employees do not solicit other employees for leave. On RARE occasions, though, employees have donated leave in very unusual circumstances. (Please see article attached.) In this type of circumstance, the donors do designate the recipient.

1.d. Have any of the banks ever run out of leave? If so, how was that handled?

The banks have the right to assess an extra amount of leave when the bank is running precariously low. As Mr. Rick Bank indicated during the testimony, this happened once to the MCEA bank and, at the time of the assessment, some members had no sick leave left to contribute. Accordingly, they were assessed the extra day at the beginning of the next fiscal year. I also understand that the MCCSSE bank was running short about ten years ago and had to do the same thing. However, those persons who had no leave to donate were not assessed later on. Since then they have tightened up the eligibility for drawing from the bank. Additionally, when the MCCSSE bank had a surplus of leave about five years ago, they cut the assessment that year from one day of sick leave to one-half day for those persons who were already enrolled. This certainly bespeaks responsible bank management.

1.e. What, if any, reporting is done so that donors know, in general, how their donated leave was distributed?

Donors are not privy to information as to whom their leave was donated. MCPS, however, is a public institution. I imagine that persons interested in knowing the facts reported in the chart at the end of my testimony could get that data from each individual bank. My assumption is that it is not readily available otherwise. Requests for leave are handled confidentially as are the allocations of leave on a case-by-case basis. This information is not available to the general public nor to employees. Sick leave bank donations are known to the Department of Personnel and the Division of Payroll.

2. The Office of Personnel Management has expressed concern about the sense of entitlement employees may feel if they are required to contribute, even a nominal amount, into the bank. I assume that, no matter how worthy the request or how much an individual has contributed to the bank, there is no guarantee a person will receive leave from any of your banks. What is your reaction to OPM's concern and have you experienced any problems with people believing they are "owed" leave because of their participation in a bank?

Entitlement is not a term common to MCPS, nor is the concept of entitlement for routine medical needs, doctor's visits, laryngitis, strained back, flu, etc. part of a donor's expectation in terms of bank usage. My own experience is limited in terms of people believing that the bank "owed" them leave. In fact, I personally know of no cases that fit the question. I would suggest that you pursue this further with those persons listed in 1.b. above. The rather obvious solution to preventing problems in this area is to establish clear criteria at the outset of the programs. Flexibility may be necessary, of course, since experience is a great teacher.

3. I appreciate your positive remarks regarding leave banks, in general, and my bill, in particular. Nonetheless, given your extensive experience with leave banks, I would like any

criticism you may have regarding the bill. What problems, if any, do you see with the bill as it is currently written? Have we left any critical aspects out or included anything which you feel will inhibit it's intended purpose?

With regard to your bill, I can make the following comments:

S. 6331. Definitions

(5) I like the way this is worded, and find it more tolerable than "catastrophic illness." However, you might need to put a ceiling on the amount of time available for any one illness, or any one family member. In addition, I'd suggest that you define "prolonged absence" and "substantial loss of income" if not in the bill, at least in the regulations that provide the basic guidelines for operationalizing. As written, I might note that pregnancy and/or maternity leave, child care, etc., could be assumed to be included. With the growing problem of eldercare, my suggestion is that you clearly spell out your restrictions and limitations somewhere.

S. 6333. How small is your smallest agency? Have you considered combining one or more to maintain a reasonable pool of leave time in each bank?

S. 6334. Well written.

S. 6335. (2) I have problems with this section. I personally don't see the need or the point of building into the leave bank the personalized aspects of individuals "stating a concern and desire to aid a specified proposed leave recipient." I think there's the potential here for undue pressure on the three-person committee and a potential for conflicts of interest and ethical concerns. The very fact that you have included (B) would seem to indicate that you anticipate some problems along these lines. My suggestion would be to delete all of item 2 including (A) and (B) and let the Leave Bank Board do the job they are set up to do, without encumberances.

S. 6336. (2)(A) This sounds like a continuous contribution period. If so, I would recommend that you have an "open season" for contribution at the start of the bank, and thereafter at the start of each fiscal year. The only exception would be persons who lack the required one year of Federal service, in which case you could allow for a one-month "window" after they achieve their first year, so as to be able to join. If they miss the window, then the next available time would be at the "open season" tied in just before the beginning of the next fiscal year. Such a procedure should reduce the problems with accounting for the leave and make it consistent across the board. It would also preclude persons joining when they think they might need to use the leave bank within a relatively short period of time (even though they show no physical symptoms on the job.)

Last item (d). I'm not clear as to why voluntary contributions in excess of minimum amounts are being sought, but perhaps it fits into the Federal leave system with which I have little knowledge.

S. 6337. (c)(2) The potential for inequity between agencies is likely to come at this point, but perhaps that's no different than the clear differences in our sick leave banks run by different negotiating groups. However, it could create a problem if there aren't fairly uniform standards across the board.

S. 6338. (a)(1) The terminology is rather officious here. Just because the Leave Bank Board deems that a medical emergency no longer exists, does not, in fact, terminate the medical emergency, as stated in (a). That would be within the purview of the medical community to decide. Perhaps some acknowledgment of the latter can be included in the former statement.

You might also want to add a protection that persons using the banks must have written medical approval to return to the job. This will guard against those who needed the leave, used the leave, but didn't complete or refused to complete the necessary treatment. (This is not unusual with persons in alcohol/drug rehabilitation programs or in psychiatric facilities.)

S. 6339. This was also in Senator Domenici's bill. I fail to see the need for it, unless it is a routine part of Federal regulations. If S. 6335 (2) is modified or deleted as suggested above, this whole section could be tossed out. To me, it cheapens the whole intent; and, based on my experience, it is practically useless. Very few employees are going to allege violation of this section because the personal reprisals are potentially far more damaging than any possible advantage to "alleging a prohibited personnel practice." For example, how many actual sexual harrassment cases come to light, compared to the possible total?

Attachments

ATTACHMENTS TO QUESTIONS

Informal Responses to Questions asked by Miriam Cameron of Mr. Alfred Rico.

Sample Sick Leave Bank Donation Form for MCCSSE

Sample MCPS Payroll Stub Showing Sick Leave Bank Information

Article from Montgomery Journal on Sick Leave Sharing in MCPS

April 5, 1988
Miriam K. Cameron

3/3/88

Mimi: Here are questions I asked Rico and the answers.

1. Problems of the Sick Leave Banks (there are four) in MCPS:

MAJOR problem:
All sick leave bank payments are after the fact. Employee does not get grant money till after they have been sick. Then they get a big retroactive payment.

problem: Cost of computer and employee deductions. Takes time. Because of retroactive payments, employee keeps calling Payroll and this takes worker time.

problem: When the bank grants come, they may come after payday and employee then expects Payroll to drop everything and write a check.

problem: Late payment affects Credit Union loans, retirement, insurance, etc. because money is not paid to these accounts when employee is not paid.

problem: MCPS has four sick leave banks. When people transfer positions, this might cause change of sick leave bank and there is a delay in transfer of bank money in this case (especially if bank did not know of employee's job category change)

problem: People who work different amounts of hours and are constantly changing hours - affects amount contributed to Sick Leave Bank. i.e. 4 hour person changes to 8 hours. Rico said the rule should be that on July 1, whatever you are employed as on that day, is what determines contribution to sick leave bank. Changes all during year should not be allowed. Too complicated and expensive.

problem: Several people have two MCPS jobs but not enrolled in sick leave bank for each job. Get only sick leave funds for one enrolled in.

problem: Disallowed disability pay. An employee has been paid under Workmen's Compensation for 3-4 weeks when notice comes from Workmen's Comp. that disability not valid and they refuse to pay. Sick leave bank also refuses to pay and employee then owes MCPS a bundle of money. Collection of this is a problem.

problem: Donation rates for 10 mos. and 12 mos. vary according to job. Donation should be uniform rate for everyone - New and old employees. Union sets these rates and Payroll therefore can't make computer work automatically. Thus,extra time and money.

problem: Advance sick leave and 3/4 sick leave. Should be done away with. (I pointed out that there are very justifiable 3/4 sick leave pay requests that our office is involved with)

COST TO ADMINISTER: Actual administering is not too expensive but the many facets of running the program is expensive.

COMMENT'S: It is an expensive benefit but a very good one for the employee.

SHARED LEAVE: It can be discriminating, abused, biased, cost of givers giving to bank. Is expensive. Completely destroys philosophy of saving.

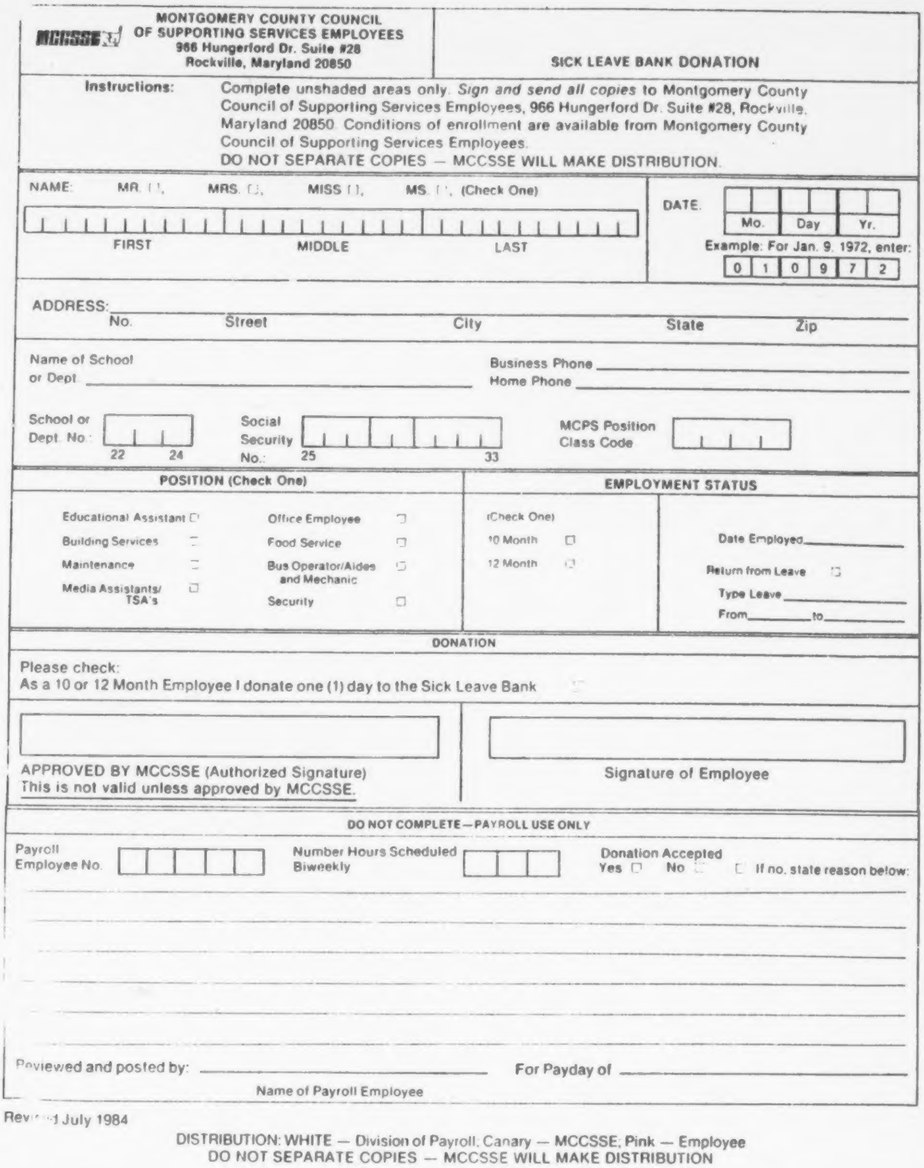
2 March 1988

Ric~~c~~o:

Mimi Cameron and two others have been asked to testify before a Congressional Committee as to the pros and cons of sick leave bank/ shared leave. The Federal Government is thinking of starting a Sick Leave Bank but they are talking about having employees contribute annual leave, not sick leave when joining the bank.!!

Mimi would like your perspective on this.

1. How much of a problem, if any, has it been in MCPS?
2. How costly has it been to administer?
3. Any comments regarding your history of experience with the Sick Leave Bank.
4. Your reaction to problems with shared leave. Apparently it has been done on occasion in MCPS. (Indian woman who had not been here long enough to be in the sick leave bank)



MCCSSE

MONTGOMERY COUNTY COUNCIL
OF SUPPORTING SERVICES EMPLOYEES
966 Hungerford Dr. Suite #28
Rockville, Maryland 20850

SICK LEAVE BANK DONATION

Instructions: Complete unshaded areas only. *Sign and send all copies* to Montgomery County Council of Supporting Services Employees, 966 Hungerford Dr. Suite #28, Rockville, Maryland 20850. Conditions of enrollment are available from Montgomery County Council of Supporting Services Employees.
DO NOT SEPARATE COPIES — MCCSSE WILL MAKE DISTRIBUTION.

NAME: MR. ☐, MRS. ☐, MISS ☐, MS. ☐, (Check One)

FIRST MIDDLE LAST

DATE. Mo. Day Yr.

Example: For Jan. 9, 1972, enter: 0 1 0 9 7 2

ADDRESS: No. Street City State Zip

Name of School or Dept. ____

Business Phone ____
Home Phone ____

School or Dept. No.: 22 24

Social Security No.: 25 33

MCPS Position Class Code

POSITION (Check One)

- Educational Assistant ☐
- Building Services ☐
- Maintenance ☐
- Media Assistants/ TSA's ☐
- Office Employee ☐
- Food Service ☐
- Bus Operator/Aides and Mechanic ☐
- Security ☐

EMPLOYMENT STATUS

(Check One)

- 10 Month ☐
- 12 Month ☐

Date Employed ____

Return from Leave ☐

Type Leave ____

From ____ to ____

DONATION

Please check:
As a 10 or 12 Month Employee I donate one (1) day to the Sick Leave Bank ☐

APPROVED BY MCCSSE (Authorized Signature)
This is not valid unless approved by MCCSSE.

Signature of Employee

DO NOT COMPLETE — PAYROLL USE ONLY

Payroll Employee No.

Number Hours Scheduled Biweekly

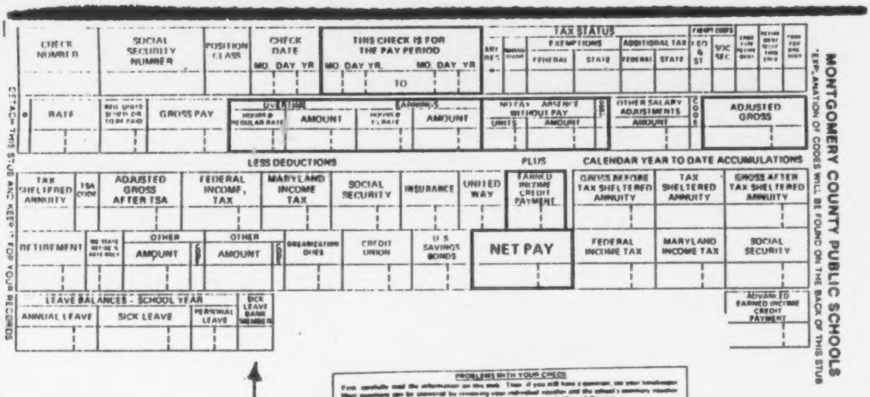
Donation Accepted
Yes ☐ No ☐ ☐ If no, state reason below:

Reviewed and posted by: ____ For Payday of ____

Name of Payroll Employee

Revised July 1984

DISTRIBUTION: WHITE — Division of Payroll; Canary — MCCSSE; Pink — Employee
DO NOT SEPARATE COPIES — MCCSSE WILL MAKE DISTRIBUTION



DETACH THIS STUB AND KEEP IT FOR YOUR RECORDS

CHECK NUMBER | SOCIAL SECURITY NUMBER | POSITION CLASS | CHECK DATE MO. DAY YR. | THIS CHECK IS FOR THE PAY PERIOD MO. DAY YR. TO MO. DAY YR.
TAX STATUS: MD RES. | MARITAL STATUS | EXEMPTIONS FEDERAL STATE | ADDITIONAL TAX FEDERAL STATE | EXEMPT CODES FED & ST, SOC SEC | [illegible]
RATE | UNITS WORKED OR TO BE PAID | GROSS PAY
OVERTIME: HOURS @ REGULAR RATE, AMOUNT | EARNINGS: HOURS @ 1½ RATE, AMOUNT
NO PAY — ABSENCE WITHOUT PAY: UNITS, AMOUNT | CODE
OTHER SALARY ADJUSTMENTS AMOUNT | CODE
ADJUSTED GROSS

LESS DEDUCTIONS

TAX SHELTERED ANNUITY | TSA CODE | ADJUSTED GROSS AFTER TSA | FEDERAL INCOME TAX | MARYLAND INCOME TAX | SOCIAL SECURITY | INSURANCE | UNITED WAY

PLUS

EARNED INCOME CREDIT PAYMENT

RETIREMENT | MD STATE RETIRE % RATE ONLY | OTHER AMOUNT CODE | OTHER AMOUNT CODE | ORGANIZATION DUES | CREDIT UNION | U S SAVINGS BONDS

NET PAY

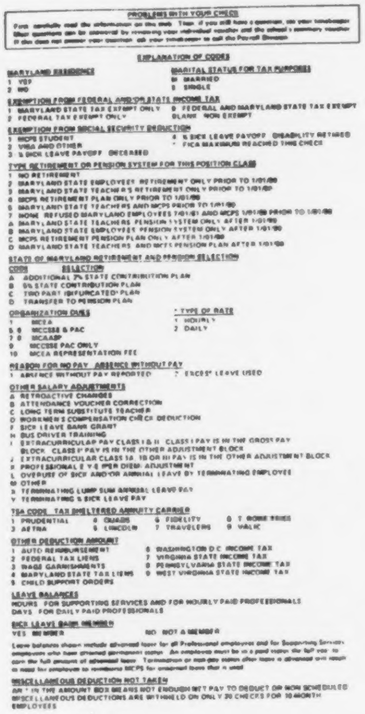
CALENDAR YEAR TO DATE ACCUMULATIONS

GROSS BEFORE TAX SHELTERED ANNUITY | TAX SHELTERED ANNUITY | GROSS AFTER TAX SHELTERED ANNUITY
FEDERAL INCOME TAX | MARYLAND INCOME TAX | SOCIAL SECURITY
ADVANCED EARNED INCOME CREDIT PAYMENT

LEAVE BALANCES - SCHOOL YEAR: ANNUAL LEAVE | SICK LEAVE | PERSONAL LEAVE | SICK LEAVE BANK MEMBER

MONTGOMERY COUNTY PUBLIC SCHOOLS

*EXPLANATION OF CODES WILL BE FOUND ON THE BACK OF THIS STUB



PROBLEMS WITH YOUR CHECK

First, carefully read the information on this stub. Then, if you still have a question, see your timekeeper. Most questions can be answered by reviewing your individual voucher and the school's summary voucher. If this does not answer your question, ask your timekeeper to call the Payroll Division.

EXPLANATION OF CODES

MARYLAND RESIDENCE
1 YES
2 NO

MARITAL STATUS FOR TAX PURPOSES
M MARRIED
S SINGLE

EXEMPTION FROM FEDERAL AND/OR STATE INCOME TAX
1 MARYLAND STATE TAX EXEMPT ONLY
2 FEDERAL TAX EXEMPT ONLY
9 FEDERAL AND MARYLAND STATE TAX EXEMPT
BLANK NON EXEMPT

EXEMPTION FROM SOCIAL SECURITY DEDUCTION
1 MCPS STUDENT
2 VISA AND OTHER
3 ½ SICK LEAVE PAYOFF DECEASED
4 ½ SICK LEAVE PAYOFF DISABILITY RETIRED
* FICA MAXIMUM REACHED THIS CHECK

TYPE RETIREMENT OR PENSION SYSTEM FOR THIS POSITION CLASS
1 NO RETIREMENT
2 MARYLAND STATE EMPLOYEES RETIREMENT ONLY PRIOR TO 1/01/80
3 MARYLAND STATE TEACHER'S RETIREMENT ONLY PRIOR TO 1/01/80
4 MCPS RETIREMENT PLAN ONLY PRIOR TO 1/01/80
5 MARYLAND STATE TEACHERS AND MCPS PRIOR TO 1/01/80
7 NONE REFUSED MARYLAND EMPLOYEES 7/01/81 AND MCPS 1/01/80 PRIOR TO 1/01/80
A MARYLAND STATE TEACHERS PENSION SYSTEM ONLY AFTER 1/01/80
B MARYLAND STATE EMPLOYEES PENSION SYSTEM ONLY AFTER 1/01/80
C MCPS RETIREMENT PENSION PLAN ONLY AFTER 1/01/80
D MARYLAND STATE TEACHERS AND MCPS PENSION PLAN AFTER 1/01/80

STATE OF MARYLAND RETIREMENT AND PENSION SELECTION

CODE	SELECTION
A	ADDITIONAL 7% STATE CONTRIBUTION PLAN
B	5% STATE CONTRIBUTION PLAN
C	TWO PART (BIFURCATED) PLAN
D	TRANSFER TO PENSION PLAN

ORGANIZATION DUES
1 MCEA
5, 6 MCCSSE & PAC
7, 8 MCAASP
9 MCCSSE PAC ONLY
10 MCEA REPRESENTATION FEE

* TYPE OF RATE
1 HOURLY
2 DAILY

REASON FOR NO PAY ABSENCE WITHOUT PAY
1 ABSENCE WITHOUT PAY REPORTED
2 EXCESS LEAVE USED

OTHER SALARY ADJUSTMENTS
A RETROACTIVE CHANGES
B ATTENDANCE VOUCHER CORRECTION
C LONG TERM SUBSTITUTE TEACHER
D WORKMEN'S COMPENSATION CHECK DEDUCTION
F SICK LEAVE BANK GRANT
H BUS DRIVER TRAINING
I EXTRACURRICULAR PAY CLASS I & II. CLASS I PAY IS IN THE GROSS PAY BLOCK. CLASS II PAY IS IN THE OTHER ADJUSTMENT BLOCK
J EXTRACURRICULAR CLASS IA, IB OR III PAY IS IN THE OTHER ADJUSTMENT BLOCK
K PROFESSIONAL E.Y.E. (PER DIEM) ADJUSTMENT
L OVERUSE OF SICK AND/OR ANNUAL LEAVE BY TERMINATING EMPLOYEE
M OTHER
X TERMINATING LUMP SUM ANNUAL LEAVE PAY
Y TERMINATING ½ SICK LEAVE PAY

TSA CODE TAX SHELTERED ANNUITY CARRIER
1 PRUDENTIAL
3 AETNA
4 QUABS
5 LINCOLN
6 FIDELITY
7 TRAVELERS
8 T. ROWE PRICE
9 VALIC

OTHER DEDUCTION AMOUNT
1 AUTO REIMBURSEMENT
2 FEDERAL TAX LIENS
3 WAGE GARNISHMENTS
4 MARYLAND STATE TAX LIENS
5 CHILD SUPPORT ORDERS
6 WASHINGTON D.C. INCOME TAX
7 VIRGINIA STATE INCOME TAX
8 PENNSYLVANIA STATE INCOME TAX
9 WEST VIRGINIA STATE INCOME TAX

LEAVE BALANCES
HOURS FOR SUPPORTING SERVICES AND FOR HOURLY PAID PROFESSIONALS
DAYS FOR DAILY PAID PROFESSIONALS

SICK LEAVE BANK MEMBER
YES MEMBER
NO NOT A MEMBER

Leave balances shown include advanced leave for all Professional employees and for Supporting Services employees who have attained permanent status. An employee must be in a paid status the full year to earn the full amount of advanced leave. Termination or non-pay status after leave is advanced will result in need for employee to reimburse MCPS for unearned leave that is used.

MISCELLANEOUS DEDUCTION NOT TAKEN
AN * IN THE AMOUNT BOX MEANS NOT ENOUGH NET PAY TO DEDUCT OR NON SCHEDULED MISCELLANEOUS DEDUCTIONS ARE WITHHELD ON ONLY 20 CHECKS FOR 10 MONTH EMPLOYEES

MCPS Pay stub information
April, 1988

A10 THE MONTGOMERY JOURNAL, MONDAY, AUGUST 10, 1987

Opinion

Donating leave time: An idea with no losers

Last fall, a teacher at White Oak Intermediate School in Silver Spring was diagnosed as having breast cancer.

The situation was even more dire than is ordinarily the case. The teacher had recently emigrated from India, and had not accumulated a lot of sick-leave time. Also, her husband, a consultant, had not been able to find full-time work.

That's when a school secretary, Elizabeth Price, volunteered to donate two weeks of her vacation to the teacher. The school's principal intervened, believing that other school employees would also be willing to contribute sick leave.

They did. All told, 49 staffers — including teachers, cafeteria workers, custodians, secretaries and administrators — donated six weeks of sick leave to the teacher. After her surgery, the beneficiary of this good will came to *The Journal* to publicly thank her co-workers. "It's so easy to write a check (to help others)," she said, "but to give away like these people did, it really takes your soul to do it."

Now, Congress is considering a way that might make such kind deeds more commonplace. A bill, which was introduced by U.S. Rep. Frank R. Wolf, R-Va., in May and was the subject of a hearing last week, would allow federal workers and postal employees to transfer vacation leave to fellow workers facing family emergencies.

Wolf filed the bill after hearing last year about a blind federal employee whose Seeing Eye dog was going blind. The employee needed time off to train a new dog, but he did not have any leave available and federal rules prohibited co-workers from donating leave.

Federal employees, the Reagan administration, public employee unions and a host of representatives including U.S. Rep. Connie Morella, R-8th, have all voiced support for the bill — and well they should. The bill would help those federal employees who need help the most, while not adding to the cost of government. Workers would not be compensated for giving their vacation or other time off to other employees. Further, Wolf's bill would actually set up a five-year experimental program, after which the program would be reviewed.

Some details have yet to be worked out. Members of the House Post Office and Civil Service subcommittee must decide whether employees will be allowed to transfer sick leave and vacation leave, or just vacation leave. They must also decide how leave should be transferred. In a pilot program, employees donating leave gave it directly to fellow workers. But one option would establish a "leave bank" that would allow federal workers to donate and use leave anonymously.

But there can be little doubt that the program is a worthy one. Politicians are fond of saying they have "no-lose" solutions to problems. This time, we think they're right.

STATEMENT OF
RICHARD M. BANK
EXECUTIVE DIRECTOR
MONTGOMERY COUNTY EDUCATION ASSOCIATION

before

UNITED STATES SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS
SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE, AND CIVIL SERVICES

on

SHARED LEAVE AND LEAVE BANK PROGRAMS

Mr. Chairman and members of the subcommittee:

Thank you for inviting me to appear this afternoon to discuss MCEA's sick leave bank and the concepts of shared leave and leave bank programs.

MCEA is the collective bargaining agent for over 7,000 Montgomery County Maryland teachers and is an affiliate of the Maryland State Teachers Association and the National Education Association. As collective bargaining agent, MCEA has negotiated contracts with the Montgomery County Public School System (MCPS) since 1968. Since 1971, the contract between MCEA and MCPS has incorporated a sick leave bank for teachers, governed by rules and procedures agreed to by the parties.

The bank grants sick leave to employees who have exhausted their own sick leave and are disabled from work. Employees are not liable to repay these grants.

MCEA unit members consider the sick leave bank to be a valuable benefit. Last year, over 85% of them enrolled, and that percentage is growing.

Sick leave bank membership is voluntary, and all MCEA bargaining unit members are eligible to participate. To be immediately eligible to participate, applicants must meet strict guidelines requiring them to apply within thirty days of their initial employment or by October 1, whichever is later. Unit members may apply afterwards during an annual "open season" which runs from May 1 to June 30 of each year. However, those who apply during "open season" must wait one year following enrollment to draw benefits from the sick leave bank.

Unit members joining the sick leave bank must donate a specified number of sick leave days. Full-time 10 month employees donate two days. Full-time 12 month employees donate 2.5 days. The donations of unit members who become employed in the second semester, and of part time employees, are prorated.

After their initial donation, full-time employees renew sick leave bank membership by donating one additional day of sick leave every year. Part-time employees donate a prorated share. An employee may cancel membership by written notification to the bank.

To obtain sick leave bank benefits, an applicant must first complete a sick leave bank form available from the union, on which the applicant's principal verifies the applicant's absence from school. The applicant must also submit the statement of a qualified physician detailing the applicant's disability.

To obtain sick leave bank benefits for the first time in any year, an applicant must have exhausted his or her sick leave, and must have been disabled from work for at least five work days. Benefits granted do not retroactively cover the five day waiting period.

An applicant who returns to work after receiving a grant, and who becomes disabled from work during the same year from the same condition, is eligible for another grant without a new waiting period. If the applicant becomes disabled from work during the same year from a different condition, he or she is eligible for benefits following a two day waiting period.

The bank grants benefits in increments of no more than 30 work days, and employees must submit a current medical diagnosis and prognosis every 30 days. In cases of psychological disability, the employee's physician must include a more detailed prognosis and treatment plan before additional leave is granted.

Employees are eligible for up to 240 days of leave from the bank. After a one year waiting period, they are eligible for another 120 days. No leave from the bank is available after a member exhausts 360 days of leave.

Leave bank requests are decided by a committee consisting of two union representatives, who are classroom teachers, and one MCPS representative. The MCPS representative has the authority to veto leave bank requests. However, granting or denying requests has not been a partisan labor-management issue. Indeed, the committee has agreed on the disposition of every application in recent memory. There is no appeal from the committee's decisions.

The committee may request a second medical opinion before deciding whether to make or continue a grant. The employee bears the cost of this opinion.

The bank does not grant leave for disabilities covered by worker's compensation. However, because it takes time to process and litigate compensation claims, the bank often advances leave for compensable injuries. If the right to compensation is established, the employee reimburses the sick leave bank from compensation benefits.

If the sick leave bank committee believes that disability from work is permanent, it may condition additional leave grants upon an employee's agreement to request a disability or other retirement. Pending disposition of the retirement application, the bank will normally continue the employee's grant.

The most significant sick leave bank problem has been occasional low reserves. Twice in the past 15 years, the bank was in danger of "bankruptcy." Each time, the bank assessed its members one additional day of sick leave to build up sick leave reserves. The bank has also protected itself by limiting the normal enrollment period, and by instituting a one year waiting period for benefits if an enrollment application is submitted later. These restrictions inhibit employees from waiting until they become sick to join the bank.

These measures have worked. Last year, the sick leave bank held its greatest reserves in history, while still approving 91% of the applications it received.

Employees support the sick leave bank enthusiastically. They know that the availability of sick leave from the bank makes the difference in a time of desperate need between dignity with a decent income and utter hopelessness. They also know that the bank is administered in a fair and impartial manner.

Certainly, there are abuses. There are in any system. But these are isolated.

Sometimes, an employee having difficulty at work will feign psychological illness as a pretext to leave employment for an extended period while being paid. Sometimes, an employee will request a sick leave grant for a physical condition that is not truly disabling. A few of these subterfuges undoubtedly succeed, but they are vastly outnumbered by valid grants to employees with grave and disabling illnesses or injuries.

The collective bargaining agreement provides that the Superintendent of Schools may unilaterally dispense extended sick leave at three-fourths an employee's pay rate. This is no substitute for the sick leave bank. Extended sick leave is granted at the sole discretion of the employer without guiding standards. In contrast, the sick leave bank allows employees to use their own resources to help themselves and each other under public and consistently applied rules.

While MCEA has little experience with leave sharing, we endorse it as a supplement to the insurance against catastrophic illness and injury that a sick bank provides. Leave sharing should not, however, be considered a substitute for the sick leave bank approach.

A sick leave bank like MCEA's assures that assistance is not dependent upon the good will of individual employees in particular circumstances. Benefits are granted by a committee accountable to the union and management and are available to any employee who meets standard eligibility criteria. This system protects against the possibility of favoritism and coercion inherent in a system under which individuals donate leave directly to each other.

One substantial difference between the MCEA leave bank and pending federal legislation is that the bank does not provide leave for employees to care for ill or injured dependents. There has been little discussion about dependent care coverage, largely because no one is certain how its inclusion would affect leave use. No study or projection has been done, but rough inferences from our group health insurance programs give us some concern. There, dependent care costs, especially for serious illness, are rapidly escalating. Our guess is that to extend sick leave bank coverage to cover care for dependents could require a doubling of sick leave donations. This is a price many members would question.

These practical constraints in no way detract from our support for the idea that pooled leave should be granted to employees who must care for dependents. This is an excellent proposal, and we applaud its inclusion in bills now before Congress.

MCEA's extensive experience with its sick leave bank demonstrates convincingly that empowering employees to pool their leave provides an indispensable and dependable bulwark against the disastrous loss of income that often accompanies serious illness or injury. We hope Congress will enact enabling legislation for federal employees soon.

For your convenience, I have attached summary reports of sick leave bank operations for the past three years.

Montgomery County Education Association

1776 EAST JEFFERSON STREET, SUITE 220 • ROCKVILLE, MARYLAND 20852 • PHONE: (301) 881-5305
Mark Simon, President
Walter W. Rogowski, Executive Director

August, 1985

MEMORANDUM

TO: Mark Simon
MCEA President

Dr. Wilmer S. Cody
Superintendent of Schools

Board of Directors
of MCEA

Faculty Representatives
of MCEA

FROM: Carol Bergen, Chairperson
MCEA Sick Leave Bank Committee

RE: Report of the Sick Leave Bank
(July 1, 1984-June 30, 1985)

The following is the most recent data available on the status of the Sick Leave Bank as of June 30, 1985.

1.	Total Membership	5,055
2.	a. Balance from previous year (days)	2,402.5
	b. Total number of days contributed	4,846.8
	c. Total number of days available for use	7,249.3
3.	Total number of persons making application for use	191
4.	Total number of persons given grants	173
5.	Total number of persons given grants more than once	69
6.	Total number of grants given	337
7.	Total number of days granted by Committee	5,699.2
8.	Average number of days granted per grant	16.9
9.	Average number of days granted per person	37.9

-over-

10.	Number of days used	4,909.2
11.	Average number of days per person	28.3
12.	Adjustments, includes payroll processing corrections, voucher corrections, incomplete grants, days returned to the Bank, etc.	288.4
13.	Balance as of June 30, 1985 (days)	2,051.7
14.	Total number of Committee meetings	23

MCEA:pg

cc: Phyllis Cochran
Lisa Graffen
Jess Graham
Walt Rogowski
Rob Landau

MCEA
MONTGOMERY COUNTY EDUCATION ASSOCIATION
1776 East Jefferson Street • Suite 220 • Rockville, Maryland 20852
Phone: (301) 881-5305
Mark Simon, President
Rick Bank, Executive Director

September, 1986

MEMORANDUM

TO:
Mark Simon
MCEA President

Dr. Wilmer S. Cody
Superintendent of Schools

Board of Directors
of MCEA

Faculty Representatives
of MCEA

FROM:
Carol Bergen, Chairperson
MCEA Sick Leave Bank Committee

RE:
Report of the Sick Leave Bank
(July 1, 1985-June 30, 1986)

The following is the most recent data available on the status of the Sick Leave Bank as of June 30, 1986.

1.	Total Membership	5,334
2.	a. Balance from previous year (days)	2,051.7
	b. Total number of days contributed	5,479.4
	c. Total number of days available	7,531.1
3.	Total number of persons making application for use	185
4.	Total number of persons given grants	176
5.	Total number of persons given grants more than once	56
6.	Total number of grants given	295
7.	Total number of days granted by the Committee	5,415
8.	Average number of days granted per grant	18.4

(over)

9.	**Average number of days granted per person**	30.7
10.	**Number of days used**	5,027.8
11.	**Average number of days used per person**	28.5
12.	**Adjustments, includes payroll processing corrections, voucher corrections, incomplete grants, days returned to the Bank etc.**	121.5
13.	**Balance of days as of June 30, 1986**	2,381.8
14.	**Total number of Committee meetings**	23

MCEA:pg

c: Phyllis Cochran
Lisa Graffen
Bob Knotts
Rob Landau

MCEA
MONTGOMERY COUNTY EDUCATION ASSOCIATION
1776 East Jefferson Street • Suite 220 • Rockville, Maryland 20852
Mark Simon, President
Rick Bank, Executive Director
Phone: (301) 881-5305

October 5, 1987

TO: Mark Simon, MCEA President; Dr. Harry Pitt, Superintendent of Schools

MCEA Board of Directors; Association Representatives of MCEA

FROM: Carol Bergen, Chairperson
MCEA Sick Leave Bank Committee

RE: Report of the Sick Leave Bank for the 1986-87 School Year

The following is the most recent data available on the status of the Sick Leave Bank. This information is for the year ending June 30, 1987.

1.	Total Membership	5,931 members
2.	a. Total number of days contributed (1986-87 school year)	6,328 days
	b. Balance from previous year (1985-86 school year)	2,381 days
	c. Total number of days available for use for the 1986-87 school year)	8,709 days
3.	Total number of persons making application for use	186
4.	Total number of persons given grants	175
5.	Total number of persons given grants more than once	59
6.	Total number of grants given	307
7.	Total number of days granted by the Committee	5,362

-over-

Teachers Working For Quality Education

8.	Average number of days granted per grant	17.4
9.	Average number of days granted per person	30.6
10.	Number of days used	4,937.5
11.	Average number of days used per person	28.2
12.	Adjustments, includes payroll processing corrections, voucher corrections, incomplete grants, days returned to the bank.	67.9
13.	Balance as of June 30, 1987 (days)	3,703.6
14.	Total number of Committee meetings	24

MCEA:pg

cc: Phyllis Cochran
Lisa Graffen
Bob Knotts
A. Rico

MCEA

MONTGOMERY COUNTY EDUCATION ASSOCIATION
1776 East Jefferson Street • Suite 220 • Rockville, Maryland 20852
Phone: (301) 881-5308
Mark Simon, President
Rick Bank, Executive Director

PM 3:47

March 29, 1988

The Honorable David Pryor
United States Senate
Committee on Governmental Affairs
Subcommittee on Federal Services,
Post Office, & Civil Service
Washington, DC 20510

Dear Senator Pryor:

This responds to your letter of March 24, 1988, requesting further information concerning sick leave banks:

Question 1:

> One of the concerns that OPM has with a leave bank approach is that some employees who choose not to join the bank and later become seriously ill may slip through the cracks. In your statement, you mention that 85% of MCEA members are enrolled in the sick leave bank. Do you share OPM's concerns, and would you tell us what happens to the other 15% who are not bank members when they experience a personal emergency and can't work?

Answer:

> As a general matter, I do not share OPM's concern for employees who choose not to join the sick leave bank. This assumes that those who choose not to join were fully informed of the benefits of the sick leave bank, its costs, and the risks of non-coverage. Certainly, employees who want a sick leave bank should not be prevented from having one simply because a few employees might make the informed choice not to join and suffer adverse consequences because of their failure to join.
>
> In the particular context of the Montgomery County Public School system, the consequences for those who fail to join the sick leave bank may not be severe. Under the contract between MCPS and MCEA, employees are allowed to accrue unlimited amounts of sick leave. In addition, other types of unused leave automatically convert to sick leave. As a consequence, employees with many years of service can accumulate 200 or more sick days. Many of those who choose not to join the sick leave bank are older employees who believe that their personal "sick leave bank" is adequate to cover their needs.

Teachers Working For Quality Education

In addition, employees who are not enrolled in a sick leave bank can still apply to MCPS for extended sick leave at three-quarters (3/4) pay. There are no criteria governing granting of sick leave under these provisions, and the matter is left entirely to the discretion of the administration.

Question 2:

You mention in your testimony that your bank was in danger of bankruptcy twice in the past 15 years and you assessed each member one day of additional leave in order to build the bank's reserves. What was the reaction of your members to the additional assessments?

Answer:

Many members were angry. Some members withdrew in protest, and many called for drastic reforms. The following changes were considered:

- Establishing mandatory waiting periods without pay;
- Paying only a percentage of the member's daily rate instead of paying 100% of the member's daily rate;
- Decreasing the maximum available days from the current 240;
- Permitting bank leave only for periods of hospitalization and related confinement;
- Requiring bank users to pay back a portion of the days they have used;
- Limiting the use of the bank for maternity related disabilities;
- Changing the contribution structure so that those most likely to use the bank would contribute more days to the bank.

All of these options were seriously considered, but none were adopted. The bank did adopt more stringent timelines within which members can apply to enroll in the sick leave bank. This cut down the number of people who apply only after they know they are sick, and the sick leave bank has remained in excellent financial health.

Sincerely,

Richard M Bank

Richard M. Bank
Executive Director

RB162

TESTIMONY OF DR. MOLLIE H. BOWERS, ASSOCIATE PROFESSOR, UNIVERSITY OF BALTIMORE, AND ARBITRATOR, BEFORE THE SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE AND CIVIL SERVICE OF THE SENATE GOVERNMENT AFFAIRS COMMITTEE

March 18, 1988

Mr. Chairman, Members of the Committee and Staff, distinguished guests, I am Dr. Mollie H. Bowers, Associate Professor, Robert G. Merrick School of Business, University of Baltimore, and member of the National Academy of Arbitrators. I appreciate the opportunity to appear before you today and to share information with you as you deliberate legislation to establish leave banks or leave sharing programs for the Federal service.

Your foresight and efforts are to be commended in addressing the challenging and complex issues associated with such legislation. This is not a frivolous compliment. Both of the bills you are considering are unique in that they lead rather than follow employee relations policy with respect to leave in the private sector and most of the public sector. Furthermore, where policy concerning leave banks or leave sharing has been established by certain states, such as Maryland, Connecticut, Washington state and Alaska, the experience is too new to have been thoroughly and objectively studied and conclusive results obtained. Consequently, my testimony draws its essence from the years of experience I have had in Federal, public and private sector labor relations.

Clearly, the premise upon which both bills are based is sound. That is, a reasonable need exists in the Federal service to relax prevailing policy so that bona fide employee requests for extended and often unanticipated medical leave can be met. This need is demonstrated not only by the AIDS crisis, but also by the growing concern about the methods and means of responding to other catastrophic illnesses as well as to the increasingly pressing burdens of both elder and child care. The recently published regulations from the Office of Personnel Management (OPM) partially address these needs by making it possible for agencies government-wide to respond to needs for leave sharing. This is only the tip of the iceberg, however.

In my judgment, the most fundamental issue that this Subcommittee must consider is the extent to which any legislation should go farther than establishing that either leave banks or leave sharing shall be the policy government-wide. My recommendation is that this should be the extent of any legislation so that, in unionized settings, the impact and implementation of the policy would be left to labor and management to determine at the bargaining table and, in nonunion settings, by the agency. I understand that in making this recommendation, I am opting to sacrifice the application of such policy on a fair, consistent and equitable basis government-wide. It is my belief, however, that this sacrifice is not only warranted, but also essential to best meet the widely divergent needs and characteristics of both agencies and employees in the Federal service.

Two examples may help to illustrate the validity of this argument. First, assume an agency location in which the preponderance of the work force is comprised of females. Whether a leave bank or a leave donation scheme prevails, the fact is and is likely to remain so for the foreseeable future that more women than men will have primary responsibility for care of both young and old dependents. Thus, females will tend to have a disproportionate need to draw upon extended leave reserves. In order to best accommodate the needs that arise, therefore, it may be reasonable and necessary under such circumstances to establish a limit on the amount of leave that can be taken and/or to require that leave be donated for a specified period of time prior to being eligible to draw on the reserve available.

Second, assume an agency location where most of the occupations are at a low GS level, where there is a high rate of turnover and where some employees do eventually progress to fairly high GS levels. Consider what would happen to the financial accounting system for that location or agency if most of the employees contributing leave were paid at a low GS level and most of those drawing upon leave were at a high level. Obviously, that location or agency could lose money given this configuration of the work force but the opposite is also possible if this configuration were reversed. The bottom line is that labor and management or the relevant agency head is in the best position to determine how extended leave opportunities can be implemented most successfully in terms of the needs of the employees and the efficiency of the service.

As an introduction to consideration of specific policy alternatives for providing extended leave, I agree with OPM that under no circumstances should sick leave be used for such programs on either a voluntary or a use-or-lose basis. If unused sick leave or a portion thereof was donated or rolled over into an extended leave program, this could provide an incentive for some employees to use their sick leave whether or not they had a bona fide need to do so. The potentially negative implications in terms of the economy and efficiency of the Federal service is obvious. Moreover, unused sick leave counts toward retirement in the Federal service so that an employee may incur double jeopardy from such a scheme.

The direct employee donation approach to extended medical leave will now be addressed. A positive element of such an approach can be to condition entitlement to benefits upon donations received from each individual. This places the responsibility to plan for the contingency that extended leave may be needed at some future time squarely upon the shoulders of employees. It is not entirely clear, however, that this approach would necessarily be responsive to the general need that has spawned this legislative debate. Specifically, what, if anything, would be done in the case of a relatively short-term employee who has donated time but simply has not been with an agency long enough to accumulate sufficient benefits to cover an extended medical leave? If the answer is 'nothing', than a significant portion of the work force in a given location, agency or even government-wide may have no greater protection in the event of an extended medical leave situation than he/she does now.

This potential problem is also not resolved if a provision is added enabling employees to voluntarily donate time to their co-workers. While each of us might be moved in theory by the plea for help in a given circumstance, the possibility exists in practice that insufficient leave might be volunteered depending upon the reason given (for example, an AIDS case) and/or the propensity of the recipient to have chronically used all of his/her sick leave prior to the event in question. Co-workers in this situation may react primarily to the past abuse rather than to the current emergency. Historically, workers have demonstrated a willingness to band together through labor unions, credit unions and organizations like the Knights of Columbus. Today, however, it is less evident that individuals can be predictably counted on to give away a benefit they have earned to someone who has not. Regardless of which scenario might obtain, the opportunities are abundant for disparate treatment with or without just cause and, hence, for amplification of employee relations problems impacting upon the efficiency of the Federal service.

These same limitations may arise where leave banks are concerned especially if the particulars are imposed by legislation rather than shaped by negotiations or some other form of employee participation. One area where controversy can be eliminated ahead of time is to require that leave banks for employees be separated from those for supervisors. By so doing, the potential for coercion can be thwarted as well as any problems, real or perceived, that may be associated with disproportionate use of a leave bank by employees vis-a-vis their supervisors or vice versa.

There are, however, a number of other critical questions associated with leave bank policies. For example, if the donation of time is not voluntary (e.g., state of Maryland), and, instead, some portion or all of use-or-lose leave is invested, will this unnecessarily encourage employees to use more leave? At this juncture, there does not appear to be a large enough body of experience to answer this question.

It is unlikely, moreover, that every meritorious reason for drawing leave from a bank can be anticipated and codified ahead of time. As a result, some language governing access to the bank will have to remain vague. This gives rise to the questions of who shall decide whether or not access will be granted in certain cases and what criteria shall be used to make this decision? Popular in today's litany of possible answers is some form of employee participation such as a labor-management committee. While this may well be the answer, it is worthwhile to note that another level of bureaucracy may be created in the process. A decision would also have to be made concerning the composition of such a committee and, if employees and management are represented in equal numbers, how shall a tie-breaker be achieved. The mechanics may tend to become even more cumbersome from here since, in unionized settings, such decisions may be appealable through the grievance procedure. Clearly, it would be impracticable to wait for the outcome in arbitration to decide the appropriateness of need in a case claimed to be a catastrophic illness!

Finally, regardless of whether a leave bank is established on the basis of voluntary or mandatory donations of time, administrators must be ever mindful of the varying cost of the hours accumulated in relation to the seniority of the affected employees and of the users. As stated earlier, this may give rise to a positive or negative cash flow at any given time that is likely to be difficult to predict for budgetary purposes. This problem could be magnified further by legislating or negotiating the right of employees to vest and make portable their leave bank entitlement accrued in one agency if they move to another agency within the Federal service or from the employee to the management ranks in a given agency.

I have responded to the Committee's interest in obtaining insight into the nuances of administering leave bank and leave sharing programs. It should be evident from my remarks that the legislation before you has many complex implications the consequences of which are largely uncharted at this time. Nothing contained in this testimony, however, is intended to dissuade you from leading the nation in this most critical area of leave policy.

Thank you for providing me with the opportunity to address this body. I shall be happy to entertain any questions you may have and to provide answers to the extent of my knowledge.

MOLLIE H. BOWERS, PH.D.
Dispute Settlement Services
106 BEECH VIEW COURT
TOWSON, MARYLAND 21204
301/494-0843

1988 MAR 29 AM 9: 05

March 28, 1988

The Honorable Senator David Pryor
Chairman
Subcommittee on Federal Services,
Post Office and Civil Service
United States Senate
Washington, DC 20510-6250

Dear Honorable Senator Pryor:

I appreciated the opportunity and was honored to testify before the Subcommittee on Federal Services, Post Office and Civil Service on March 18, 1988. I was also glad that your staff transmitted my suggestion to solicit testimony on the proposed leave bank and leave sharing legislation from Federal sector unions. It is essential that all affected parties be heard from so that the most informed decisions can be made when the legislation is marked up the final time.

You have now asked me for my opinion regarding which of the two bills the Subcommittee is considering, S.2140 sponsored by you or S.1595 sponsored by Senator Domenici, "...goes the farthest in meeting the serious needs of federal employees and why?" There is no doubt in my mind that S.2140 is the better bill for the two general reasons that it is more comprehensive and addresses more of the critical issues concerning leave programs than does S.1595. I shall provide more specific reasons for this general conclusion, first, by identifying and explaining what I consider to be important deficiencies in S.1595. These are listed below in summary form:

1) There is an inconsistent and vague definition of the purposes for which a person may become eligible to use shared leave. One definition appears in paragraph 4 of this proposed bill and another in paragraph 6;

2) In paragraph 4, this bill also states that leave may be donated to a co-worker who "...lacks sufficient leave to attend to the problem." but no provision is made for assessing the reasons for a lack of leave which could include prior leave abuse or for dealing with these cases;

3) This bill is totally devoid of any employee/union ownership/participation, except as potential donors, in the administration of leave sharing. I think this is a serious defect since employees are being asked to donate leave but have no input or stake in its expenditure. I think this could cause numerous problems of fairness, consistency, equity and commitment to the program over the long-run;

4) As I attempted to explain in my testimony on March 18, 1988, I think it is a serious error to promulgate policy on leave sharing based upon the assumption that gifts of leave are cost-free to the employer;

5) In Section 6333.(b)(1) this bill states that "any annual leave and (if appropriate) any sick leave accrued..." may be transferred. I stated in my March 18th testimony that I oppose inclusion of sick leave in any leave sharing or bank program and the reasons why. What must be pointed out here is that the use of the phrase "if appropriate" is not followed by any guidance that will determine who shall decide and according to what criteria when an "if appropriate" circumstance exists;

6) With respect to Section 6334.(a) and (b), I reiterate that closing the door to employee/union participation in decision-making is probably not sound policy for administration of such a program and may have other negative impacts on employee morale, the willingness to donate time at all and on the fairness, equity and consistency of the administration of the program. These problems could be further compounded by the failure of this proposal to address donations from and to employees/supervisors of different grades and the numerous ramifications that can result from such unspecified opportunities; and

7) I testified on March 18th and reassert now that administration of any type of leave program will inevitably increase bureaucracy and this bill overloads this consequence with complicated leave restoration provisions which I believe should be avoided at all costs and to contain the costs and complications associated with administering such programs.

There are other weaknesses of this bill that could be iterated, however, I believe the above summary provides sufficient indication of critical problem areas to support the conclusion that, if legislation is going to be adopted, this is the least desirable of the two bills from several standpoints. That is not to say, as was suggested on March 18th, that some provision for individual donation of leave might not be worth considering but, frankly, I believe that the S.2140 envisions a better system for both managing a leave program and meeting employer needs without indulging in the myriad problems that can be associated with leave sharing programs.

I shall now turn my attention to S.2140. The comments I shall make here must be read in conjunction with my written testimony on March 18, 1988. This bill also suffers from a lack of specificity about the circumstances which might cause an employer to be eligible to draw on a leave bank. I do not assume that every bona fide condition that an employee may pose in seeking to draw upon the resources of a leave bank can or should be carved in stone in legislation. At some juncture and some forum, legislatively or otherwise, clear guidance must be provided which may later be interpreted by the leave board but such guidance is lacking in the bill at the present time.

My other comments will be summarized in the same fashion as that applied to S.1595:

1) What does "substantial loss of income" mean and how shall such loss fairly, equitably and consistently be decided? Perhaps this should be designated as a determination to be left to the leave board on a case by case basis but there is no doubt in my mind that interpretation of this phrase could lead to disparate results/treatment if some guidance is not provided at some level.

2) One of the very positive attributes of this proposed legislation is that restoration of unused leave is not an issue. I commend this approach and hope that it is adopted as a general measure. However, I do envision a Catch-22 arising, given the existence of minimum donations coupled with service in an agency. What happens to the employee who has made his/her minimum donation to the agency bank and then, for whatever reason moves to another agency within the same year? Does that employee have to make a second at least minimum donation to the leave bank in the new agency in which he/she is employed? S.2140 essentially provides for portability of benefits if both agencies agree. My question is, why should they when this involves both direct economic costs and additional work unless the policy established through legislation supports portability and vesting and provides guidelines for same?;

3) Establishment of a leave board is a positive attribute of this bill but, if passed in its current form, then this means that employee/union participation will always be relegated to a one-down position (..I., employees/unions shall always have one vote out of three). While the experiments with leave programs have produced positive and heart-wrenching results, over the long-run, there must be a demonstration of fairness, equity and consistency, especially in the cases that fall in the grey area, in order for a leave bank to remain viable. The ratio of incumbents on the leave board proposed in S.2140 does not bode well for achieving this result. Even if equal representation is afforded to management and to employees/unions some method must be found or enabled by the legislation to establish a tie-breaker. What might be done in the legislation is to suggest how such a tie-breaker might be achieved and, consonant with my written testimony, to leave it up to the parties in each agency/location to determine the method they choose to use;

4) The minimum contribution standards set forth in S.2140 should be retained. I commend the insurance concept embodied in this legislation and the emphasis on personal planning as well as beneficient intent. It should be made clear, however, that when minimum contributions have been made by an employee that he/she is eligible to draw upon these benefits in accordance with policy established by legislation or, perhaps by the leave board as is the case with other types of insurance; and

5) As a thought, albeit not necessarily as a recommendation, it might be worthwhile considering the establishment of an outside fiduciary board to handle such matters as eligibility, vesting and portability. This is consistent with the analogy drawn in S.2140 to insurance although it raises such questions as should this board be established government-wide, who should be its members and under what conditions, what, if any should be its authority with respect to vesting and portability of benefits and how should control over this board be administered, whom and under what circumstances.

This completes my summary of key points for consideration where S.2140 is concerned. My oral and written testimony of March 18, 1988 are to be considered in conjunction with what has been stated here. Most especially, I do not believe at this writing that an acceptable program can be established without giving employees, through unions or otherwise, and management an opportunity to shape leave bank programs best suited to the needs of each location within an agency rather than agency-wide. Again, I stress the importance of employee ownership to the long-term success of such a plan as well as legislation relaxing prevailing prohibitions on leave sharing at all. As a final note, I think Senator Stevens raised an excellent question concerning tax implications of leave donations whether such donations be individual, to a bank, in the Federal sector or in other areas of the economy. I hope that the Subcommittee will obtain information from the Internal Revenue Service on this critical matter and act accordingly to provide clarification in any legislation it agrees upon.

Thank you again for this opportunity to be of service. I shall be happy to provide any additional information that may be helpful in your deliberations and to answer any questions you may have after reading this statement. My best wishes go with you as you consider this critical issue and, by implication, as you lead the way in the U.S. economy on the critical issue of leave banks and leave sharing programs.

Sincerely,

Mollie H. Bowers

Mollie H. Bowers

MHB:ms

STATEMENT OF
ANTHONY F. INGRASSIA
DEPUTY ASSOCIATE DIRECTOR FOR PERSONNEL
SYSTEMS AND OVERSIGHT
U.S. OFFICE OF PERSONNEL MANAGEMENT

before the

SUBCOMMITTEE ON FEDERAL SERVICES,
POST OFFICE AND CIVIL SERVICE,
COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

at a hearing on

FEDERAL EMPLOYEES' LEAVE TRANSFER AND LEAVE BANK PROPOSALS

MARCH 18, 1988

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

THANK YOU FOR INVITING ME TO APPEAR TODAY TO DISCUSS THE ISSUE OF LEAVE TRANSFER AND LEAVE BANK PROGRAMS.

THERE HAS BEEN GROWING INTEREST IN THE LAST 2 YEARS IN PERMITTING FEDERAL EMPLOYEES TO DONATE THEIR LEAVE TO FELLOW EMPLOYEES WHO ARE GRAVELY ILL OR HAVE SOME OTHER KIND OF SEVERE EMERGENCY AND WHO HAVE EXHAUSTED THEIR OWN LEAVE. THIS YEAR, UNDER THE AUTHORITY OF THE FISCAL YEAR 1988 CONTINUING RESOLUTION, WE ARE OPERATING A TEMPORARY GOVERNMENT-WIDE PROGRAM THAT WILL PERMIT THE PERSON-TO-PERSON TRANSFER OF ANNUAL LEAVE. UNDER THIS PROGRAM, EMPLOYEES MAY TRANSFER UNUSED ANNUAL LEAVE TO THE LEAVE ACCOUNT OF A FELLOW EMPLOYEE WHO IS EXPERIENCING A MEDICAL OR PERSONAL EMERGENCY AND WOULD

OTHERWISE HAVE TO GO WITHOUT PAY FOR A SUBSTANTIAL PERIOD DUE TO THE UNAVAILABILITY OF PAID LEAVE.

THIS EXISTING PROGRAM IS SUBSTANTIALLY DIFFERENT FROM A PROPOSAL NOW BEFORE THE SUBCOMMITTEE, S. 2140. S. 2140 WOULD ESTABLISH A FIVE-YEAR PROGRAM OF AGENCY LEAVE BANKS, TO BE ADMINISTERED BY AGENCY LEAVE BANK BOARDS. EACH LEAVE BANK BOARD WOULD CONSIST OF 3 MEMBERS, AT LEAST ONE OF WHOM WOULD REPRESENT AN EMPLOYEE ORGANIZATION OR GROUP. EMPLOYEES WHO WISH TO PARTICIPATE WOULD DONATE TO THE LEAVE BANK THE AMOUNT OF ANNUAL LEAVE THEY ACCRUE IN ONE PAY PERIOD, AND THEN WOULD BE ELIGIBLE TO DRAW LEAVE FROM THE LEAVE BANK LATER IN THE YEAR IF THEY ENCOUNTERED A MEDICAL EMERGENCY REQUIRING A PROLONGED ABSENCE FROM WORK AND RESULTING IN A SUBSTANTIAL LOSS OF INCOME DUE TO THE UNAVAILABILITY OF PAID LEAVE. EMPLOYEES COULD, OF COURSE, ALSO CONTRIBUTE ADDITIONAL LEAVE, AND COULD EVEN SUGGEST WHAT RECIPIENTS THEY WOULD LIKE THE LEAVE TO GO TO.

S. 2140 DOES HAVE SEVERAL SIGNIFICANT IMPROVEMENTS OVER OTHER PROPOSALS WE HAVE REVIEWED. WE HAVE BEEN VERY CONCERNED OVER PROPOSALS THAT WOULD PERMIT THE TRANSFER OR DONATION OF SICK LEAVE, SINCE THAT WOULD BE VERY COSTLY TO TO THE GOVERNMENT, AND WE ARE PLEASED TO SEE THAT S. 2140 IS LIMITED TO THE DONATION OF ANNUAL LEAVE. WE ALSO LIKE THE VERY TIGHT DEFINITION OF "MEDICAL EMERGENCY," WHICH WOULD BE LIMITED TO SITUATIONS WHERE THE MEDICAL CONDITION OF THE EMPLOYEE OR A

FAMILY MEMBER WOULD REQUIRE THE EMPLOYEE'S PROLONGED ABSENCE FROM WORK AND WOULD RESULT IN A SUBSTANTIAL LOSS OF INCOME DUE TO THE UNAVAILABILITY OF LEAVE. DESPITE THESE POSITIVE FEATURES, HOWEVER, WE DO NOT BELIEVE THAT THE LEAVE BANK APPROACH TAKEN IN S. 2140 IS THE BEST WAY TO APPROACH THIS ISSUE.

FIRST OF ALL, WE BELIEVE THAT THE PERSON-TO-PERSON NATURE OF INDIVIDUAL LEAVE TRANSFERS IS A KEY TO THE SUCCESS OF THE PROGRAM. WHEN EMPLOYEES KNOW THE RECIPIENT, AND UNDERSTAND THE CIRCUMSTANCES OF THE RECIPIENT'S EMERGENCY, THEY HAVE A MUCH STRONGER MOTIVATION TO DONATE LEAVE, AND A MUCH GREATER FEELING OF HAVING PERSONALLY PARTICIPATED IN HELPING A FELLOW EMPLOYEE IN NEED. THE DEPERSONALIZATION, EVEN ROUTINIZATION, OF LEAVE TRANSFERS THAT WOULD RESULT FROM A LEAVE BANK APPROACH COULD WELL REDUCE THIS SENSE OF PARTICIPATION AND MAY REDUCE THE AMOUNT OF DONATED LEAVE AVAILABLE FOR THOSE IN SERIOUS NEED. WHILE S. 2140 ATTEMPTS TO ADDRESS THIS PROBLEM BY PERMITTING EMPLOYEES WHO DONATE LEAVE TO SUGGEST A POTENTIAL RECIPIENT, THERE WOULD BE NO REQUIREMENT FOR THE LEAVE BANK BOARDS TO HONOR SUCH REQUESTS, AND WE BELIEVE THE LINK BETWEEN THE DONORS AND RECIPIENTS WOULD BE TOO TENUOUS TO SOLVE THIS DEPERSONALIZATION PROBLEM.

SECOND, UNDER A LEAVE BANK PROGRAM THERE WOULD, OF COURSE, HAVE TO BE PROCEDURES, RULES, AND CRITERIA FOR THE AGENCY LEAVE BANK BOARDS TO USE IN DECIDING WHO WOULD GET LEAVE FROM

THE BANK, AND HOW MUCH THEY WOULD GET. LAST YEAR, IN CONDUCTING THE 3-PERSON LEAVE TRANSFER EXPERIMENT UNDER THE FISCAL YEAR 1987 CONTINUING RESOLUTION, WE LEARNED HOW TERRIBLY HARD IT CAN BE TO HAVE TO PICK THE MOST DESERVING CASES FROM AMONG MANY POTENTIAL LEAVE RECIPIENTS. UNDER A VOLUNTARY LEAVE TRANSFER PROGRAM, THE POTENTIAL DONORS WILL JUDGE FOR THEMSELVES HOW DESERVING THE POTENTIAL RECIPIENT IS, AND THE CASES THAT RECEIVE LEAVE TRANSFERS ARE THEREFORE ESSENTIALLY SELF-SELECTING. UNDER A LEAVE BANK, HOWEVER, THE LEAVE BANK BOARDS WOULD HAVE TO MAKE ALL OF THESE DECISIONS. THE BILL IS UNCLEAR AS TO WHETHER EVEN A VERY LARGE AGENCY, WITH SEVERAL LEAVE BANKS, COULD HAVE MORE THAN ONE LEAVE BANK BOARD TO MAKE THESE DECISIONS. FURTHERMORE, IT SEEMS LIKELY THAT SOME SORT OF GRIEVANCE OR APPEALS PROCESS WOULD HAVE TO BE ESTABLISHED TO RECONSIDER THE CASES OF THOSE WHO BELIEVE THE LEAVE BANK BOARD HAS TREATED THEM UNFAIRLY.

IT SEEMS LIKELY THAT THE STRUCTURE OF THE PROGRAM UNDER S. 2140, WHERE EMPLOYEES CAN "BUY INTO" THE PROGRAM BY DONATING ONE PAY PERIOD'S LEAVE EARNINGS, WILL CREATE AN EXPECTATION THAT EACH PARTICIPATING EMPLOYEE WILL BE ABLE TO BENEFIT, AND EMPLOYEES WILL FEEL THAT THEY ARE "OWED" LEAVE FROM THE BANK WHENEVER THEY ENCOUNTER ANY MEDICAL PROBLEM, EVEN A RELATIVELY MINOR ONE. CREATING THIS SORT OF SENSE OF ENTITLEMENT MAY ALSO LEAD EMPLOYEES TO BE LESS PRUDENT IN SAVING THEIR OWN LEAVE IN CASE THEY BECOME ILL.

FINALLY, WE ARE CONCERNED THAT THE LEAVE BANK APPROACH COULD INVOLVE ADDITIONAL COSTS TO THE GOVERNMENT. LEAVE TRANSFER PROGRAMS HAVE THE POTENTIAL FOR BEING VERY COSTLY TO THE GOVERNMENT, IF THEY RESULT IN LEAVE THAT WOULD OTHERWISE GO UNUSED BEING USED. THIS IS COSTLY BECAUSE THE GOVERNMENT PAYS SALARY DOLLARS WHERE IT OTHERWISE WOULD NOT HAVE HAD TO DO SO. WHILE THE GREATEST COSTS COULD RESULT IF SICK LEAVE WERE INCLUDED IN THE PROGRAM--SOMETHING S. 2140 WISELY AVOIDS--EVEN WITH ANNUAL LEAVE,NEARLY $90 MILLION A YEAR OF LEAVE NOW GOES UNUSED, DUE TO THE RULE REQUIRING FORFEITURE AT THE END OF THE LEAVE YEAR OF ANY UNUSED ANNUAL LEAVE IN EXCESS OF THE 240 HOURS PERMITTED TO BE CARRIED OVER INTO THE NEXT LEAVE YEAR. TO THE EXTENT THIS LEAVE WOULD BE USED INSTEAD OF FORFEITED UNDER A LEAVE BANK, THERE WOULD BE A COST TO THE GOVERNMENT. WHILE THE BILL ATTEMPTS TO PREVENT THE DONATION OF LEAVE THAT WOULD BE SUBJECT TO FORFEITURE, THE PROHIBITION ON DONATING MORE LEAVE THAN HOURS OF WORK REMAIN IN THE LEAVE YEAR WOULD NOT BE ADEQUATE TO BAR MOST DONATIONS OF LEAVE THAT WOULD OTHERWISE BE FORFEITED.

FURTHERMORE, SINCE MOST LEAVE YEARS OVERLAP THE BEGINNING OF THE NEXT CALENDAR YEAR, EMPLOYEES WITH LEAVE SUBJECT TO FORFEITURE WOULD LIKELY DONATE AT LEAST ONE PAY PERIOD'S LEAVE ACCRUAL IMMEDIATELY AT THE BEGINNING OF THE CALENDAR YEAR, THUS EARNING ELIGIBILITY TO BE A LEAVE RECIPIENT THAT YEAR WITH LEAVE THAT WOULD HAVE BEEN FORFEITED ANYWAY.

IN SUMMARY, WE ARE OPPOSED TO A LEAVE BANK APPROACH BECAUSE WE BELIEVE IT WOULD BE LESS EFFECTIVE, MORE CUMBERSOME, AND MORE COSTLY THAN A PERSON-TO-PERSON LEAVE TRANSFER APPROACH. WE URGE THE COMMITTEE, IN LIEU OF ACTING ON S. 2140, INSTEAD MERELY TO EXTEND THE EXPERIMENTAL LEAVE TRANSFER PROGRAM ESTABLISHED UNDER THE FISCAL YEAR 1988 CONTINUING RESOLUTION.

THANK YOU. I WILL BE PLEASED TO ANSWER ANY QUESTIONS THE COMMITTEE MAY HAVE.

United States
Office of
Personnel Management
Washington, D.C. 20415

APR 6 1988

In Reply Refer To:

Your Reference

. Honorable David Pryor
Chairman
Subcommittee on Federal Services,
Post Office, and Civil Service
Committee on Governmental Affairs
United States Senate
Washington, DC 20510-6250

Dear Senator Pryor:

On behalf of Mrs. Horner, enclosed are our responses to the questions you submitted to us as a followup to the Subcommittee's hearing on March 18, 1988, on the concepts of leave sharing and leave banks. We appreciate the opportunity to submit our responses for the record.

Sincerely,

Tony Ingrassia

Anthony F. Ingrassia
Deputy Associate Director
for Personnel Systems and
Oversight

Enclosure

1. On March 8, OPM issued regulations to agencies regarding the Temporary Leave Transfer Program. These regulations required agencies to establish procedures for administering the program "as soon as possible," but no deadline was given.

a. When are agencies required to have such procedures established and when do you expect agencies to put the program into operations?

While there is no specific deadline required for agencies to establish procedures for administering the fiscal year 1988 voluntary leave transfer program, OPM issued a memorandum on March 4, 1988, to the Director of Personnel of each Federal agency encouraging agencies to develop procedures necessary to implement the program "as quickly as possible." The time-frame required for each agency to implement a leave transfer program depends, in part, upon whether an agency is required to consult and/or negotiate with unions representing employees.

In a recent informal survey of 37 Federal agencies (representing more than 97 percent of all Federal employees), we learned that 3 agencies already have implemented the program (Army, Transportation, and the Securities and Exchange Commission). Twenty more expect to implement the program by the end of April, and all but 6 expect to complete implementation within 90 days after the interim regulations were issued.

1.b. What type of assistance, technical or otherwise, are you providing to agencies in developing their programs and procedures?

OPM continues to assist agencies in the implementation of the fiscal year 1988 voluntary leave transfer program. In our March 4, 1988, memorandum to agency personnel directors, we included the name and telephone number of an OPM staff contact to answer questions on the temporary leave transfer program. Much of our assistance to date has taken the form of responding to telephone inquiries from agency personnel staff on the interim regulations and on procedures necessary to administer the program. We are prepared to provide any assistance that may be needed by agencies during the implementation phase of this program and during the operational phase to follow.

1.c. Can you explain why you see decisionmaking under a leave bank as troublesome and how such decisionmaking differs from what transpires under the current system?

Under a direct, employee-to-employee leave transfer program such as the fiscal year 1988 program established by OPM, the Government acts primarily as the agent for processing leave donations between employees. The leave bank approach, however, requires that judgments be made about how much leave each of several competing claimants should be given. The possibility of grievances and disputes between employees and the agency is much greater when the agency is responsible for deciding not only who is eligible to withdraw leave, but how much leave is to be withdrawn. In this regard, unless the legislation specifically excludes grievances or appeals, they will be available under existing laws. Non-federal leave banks of which we are aware tend to bar grievances or appeals based solely on denial of leave from the bank.

The decisionmaking process would be further complicated if the amount of leave available in the bank were insufficient to meet the needs of several different employees with different kinds of medical emergencies. This could lead to difficult decisions involving whether to increase minimum contribution levels or establish fixed limitations on the amount of leave available to any given leave recipient. By contrast, the only decision to be made by the agency under an employee-to-employee leave transfer program is the threshhold determination as to whether the employee is eligible to participate in the program as a leave recipient.

2. You've stated that OPM favors a person-to-person transfer of leave rather than a leave bank because the recipient of the leave is known and the circumstances of the recipient's emergency is public. How does such a proposal insure the anonymity of the recipient particularly if the recipient would prefer his/her circumstances to remain private?

We are sympathetic to concerns about employee anonymity under the temporary leave transfer program, both for potential recipients and potential donors, and we understand the conceptual appeal of a leave bank approach to remedy this problem. However, we believe that under an employee-to-employee transfer approach, the level of participation by donating employees is a result of the fact that leave donors are aware in concrete terms of the very real need of their coworker. Moreover, we think it is possible to protect employee confidentiality under an employee-to-employee transfer approach if appropriate in particular cases. If a potential leave recipient did not wish to make his or her personal emergency known to coworkers, the agency could solicit donations for the employee by using a general description of the employee's situation without revealing the employee's name. Except for recordkeeping purposes, leave donors need not reveal the fact that they have donated leave, the name of the employee to whom the leave was donated, or the amount of leave donated.

3. I share your concern about the difficult nature of identifying the most deserving leave recipient, yet I have greater concern that a voluntary program would benefit only those who are willing to openly disclose their personal circumstances, or who can more effectively sell their need for leave. How would the proposal you support assure that truly the most needing the leave would benefit from the program?

Our feeling is that the needs of employees generally are well-known within a work group. We think a bill that would permit another three to five years' experience under the leave transfer approach would give us an opportunity to see whether, in fact, some people are reluctant to come forward. Employees do not need to come forward personally in making their concerns known. This can be done by fellow employees, and where union recognition exists, by the union. The interest and concern demonstrated by other Federal employees in the welfare of their co-workers ultimately seems likely to be the most concrete achievement of a leave sharing program, and we continue to believe the direct, employee-to-employee leave transfer approach is the most effective way to achieve this goal.

4. Your testimony is critical of the leave bank approach on a number of, what I would call technical, points. For example, you express concern that year-end leave dumping could take place. Will OPM provide us with a list of suggestions that will help us correct some of your concerns about a leave bank approach?

Our opposition to the leave bank approach is not based on technical concerns, but on our strong conviction that the leave transfer approach is both more effective and more efficient. It is for this reason that we would support the enactment of H.R. 3757, the House-passed "Federal Employees' Leave Transfer Act of 1988," if that bill were amended to delete its limited experiments with leave banks.

S. 2140 is a member-only program. Those employees who, for one reason or another, do not choose to contribute leave to the bank could be forced into a leave without pay status should they suffer a personal emergency. As a result, the leave sharing program would not deal completely with the problem which we all agree exists. I note that a direct leave transfer program would be available to benefit all needy employees.

While we are, therefore, fundamentally opposed to the approach taken in S. 2140, we note that the following changes would make this bill more administratively feasible:

° The bill does not require an agency to determine that the medical emergency will require a specified period of unpaid absence, as is required under the regulations governing the fiscal year 1988 voluntary leave transfer program. Our preference is to require employees who experience a medical emergency to be (or expect to be) absent from duty without available paid leave for a period of at least 10 workdays.

° The bill requires that each agency administer one or more leave banks through the establishment of a Leave Bank Board. Each Leave Bank Board would consist of 3 members, one of which must represent a labor organization or employee group. While it is clear that some formal mechanism is needed to monitor the leave bank and to determine who is eligible to withdraw leave and how much leave can be withdrawn by a given employee, it is not clear that it would be necessary for each agency to employ precisely the same mechanism (with the same composition of membership). Variations in size, mission, location, and workforce composition among Federal agencies suggest that the precise mechanism used to administer this program might best be left to each participating agency's discretion.

- The bill is unclear as to whether an agency could establish more than one Leave Bank Board. If a standardized approach is to be adopted, we suggest that the bill provide for the establishment of one Leave Bank Board for each leave bank established by an agency.

- The bill requires that the minimum contribution to the leave bank must be made in the "calendar year" in which the employee submits an application to be a leave recipient. Since the "calendar year" does not normally coincide with the "leave year," the bill should be revised to provide that the minimum contribution must be made in the same "leave year" in which the employee submits an application. This would prevent employees from making a contribution of "use-or-lose" leave at the end of the leave year in order to satisfy the minimum contribution requirement for the new calendar year.

- The bill establishes a minimum contribution schedule of annual leave for participating employees. We are concerned that this level of employee contribution may not be sufficient and could lead to bank depletion.

- The bill provides a mechanism for reducing the minimum contribution requirement when there is a surplus of leave in the leave bank. We believe there should also be a mechanism in the bill to permit increasing the minimum contribution amount when necessary.

- While we agree that a minimum service requirement for participation in a leave bank may be desirable, we are concerned that the eligibility requirement of 1 year of Federal service may be unnecessarily long and may exclude otherwise worthy employees from participation. Employees with less than 1 year of service are the most vulnerable in terms of the limited leave they have accrued, should they experience an emergency. Permitting employees to enroll at any time, but requiring new enrollees to wait a specified period before becoming eligible to withdraw leave from the bank (e.g., 90 days) may be more appropriate.

- We do not believe leave received from a leave bank should be used to liquidate an indebtedness for advanced leave or to substitute retroactively for periods of leave without pay to the beginning of the medical emergency. Since the current voluntary leave transfer program permits participation by any Federal employee experiencing a "personal emergency" on or after December 22, 1987 (with retroactive substitution as far back as October 30, 1986), there should be no need for any further retroactivity under a leave bank program.

° The bill establishes a 5-day limitation on the amount of annual and sick leave that can accrue while an employee receives leave from the bank. We are concerned that an inference could be made that a "cushion" of leave is necessary for the employee, once the emergency is terminated. If this is the purpose of this provision in the bill, we suggest that it be removed. It should be noted that an employee could be advanced annual and sick leave under normal provisions of law if such leave is needed after the end of the emergency.

5. Your Mr. Shapiro expressed concern earlier this year that the absence of "the golden halo" under the leave sharing provision in FY88 Continuing Resolution would create problems. Who is Mr. Shapiro, and what did he mean by that comment?

Mr. Barry Shapiro is OPM's Deputy Assistant Director for Pay Programs. His comment about "the golden halo" represents an observation that the small number of leave recipients authorized under previous legislation resulted in a great deal of publicity, both in the media and within the employing agencies involved, concerning the plight of a few employees. One of the objectives of continued experimentation with the concept of voluntary leave transfer is to determine whether the same level of interest can be sustained when a much larger number of employees become eligible to participate in such a program. At this point, however, we have no reason to believe voluntary leave transfers will be insufficient to generate adequate amounts of leave for this worthy purpose.

PREPARED STATEMENT OF JOHN MULHOLLAND

My name is John Mulholland. I am the Director of Field Services of the American Federation of Government Employees (AFGE), AFL-CIO. AFGE represents over 700,000 government employees across this country. I am pleased to appear here today and to address S.1595, the Federal Employees Leave Act of 1987, introduced by Senator Peter Domenici (R-NM), and S.2140, The Federal Employees Leave Bank Act of 1988, introduced by Senator David Pryor (D-AR).

The spectre of being confronted with the choice of either holding one's job or tending to a seriously ill spouse or child haunts too many federal employees. It is a cruel choice and a choice that need not be faced if there are appropriate personnel policies in place.

We commend both Senator Domenici and Chairman Pryor for their innovative approaches to this problem and commend the Committee for holding these timely hearings.

Essentially, both of these bills set up a five-year experimental program whereby federal employees would be authorized to contribute their annual leave to other employees who are facing medical or family emergencies when the recipient employees have used up their own leave. In both bills, leave sharing is limited to annual leave; we encourage the Committee to consider broadening the pool of potential donated leave to include sick leave as well as annual leave. This may violate the cost neutrality of the bills, but such costs would likely be quite small given the limited number of employees who would qualify for the leave.

There are other alternatives and approaches to this problem such as those contained in H.R.925, the Parental and Medical

Leave Act introduced by Representative William Clay (D-MO), or S.249, the Parental and Medical Leave Act of 1987 introduced by Senators Christopher Dodd (D-CT) and Arlen Spector (R-PA), which provide mandatory leave without pay for such situations. We see S.1595 and S.2140 as complimentary with such approaches, not as an alternative to H.R. 925 or S.249.

The basic difference between S.1595 and S.2140 is that with S.1595 leave is donated and received on an individual case-by-case basis while with S.2140 employees generically contribute to a leave bank and contributors are eligible to receive the banked leave for medical emergencies. Conceptually, S.1595 is more like charity with employees contributing their leave to those who have the misfortune to need such leave. S.2140, on the other hand, is more like insurance with employees voluntarily contributing a small portion of their leave to cover their own risk of needing such leave. By and large, AFGE favors the approach taken in S.2140.

When we testified in the House on H.R.2487, which is similar to S.1595, we raised several concerns which are also relevant to S.1595. One related to the issue of coercion. Section 6337 of S.1595 explicitly forbids direct or indirect coercion of employees to contribute; however, there are no penalties attached to such action. But on a more fundamental level, whenever the leave recipient is in a managerial position and in the future will have a major say in employee's promotions and job evaluations, there is fertile ground for the appearance, if not the reality, of favoritism. It is difficult to see how this appearance can be avoided unless the legislation explicitly bars the donation of leave to one's direct supervisors. There also seems to be an existing statutory ban on supervisors accepting items of value from their employees which may create some problems for this legislation.

Another concern is with the design of the program on a case-by-case basis where donors and recipients are linked. It is our understanding the leave donors would be contributing to a particular recipient who qualifies under agency guidelines. The actual mechanics of how this would occur is difficult to envision. Would the recipient be expected to solicit such leave from his friends or co-workers? This could be a demeaning and embarrassing procedure. Would the agency publicize the employee's particular case and accept donations? This could be disturbing to the employee, especially in sensitive illnesses such as AIDS.

Finally, we note that section 6339(a) allows for collective bargaining on the leave transfer program where organizations hold exclusive recognition. We encourage the Committee, if it decides to pursue S.1595, to include language which clarifies that all aspects of the program, including the decision-making process on an employee's eligibility to be a leave recipient, are subject to such negotiations.

While having the leave transfer program of S.1595 in place would be a clear improvement over the status quo for those unfortunate to have such a medical emergency, such employees would still be faced with large uncertainties; for example, "Will enough co-workers contribute?" or "When will the leave run out?"

The approach envisioned by S.2140 addresses most of these concerns. By establishing leave pools, donors and recipients are not directly linked. [In this regard, we do not see the need for section 6335(2).] Problems of coercion and propriety are basically removed.

Also, by establishing that to qualify as a leave recipient an employee must have also been a leave contributor, a strong incentive is created to establish sufficient donations to cover recipient needs. Given sufficient donations, recipients would be relieved of the uncertainty which we noted under S.1595.

Given this general support for the approach taken by S.2140, we offer the following as areas the Committee may want to consider:

- First, the Committee may want to consider a government-wide leave bank instead of agency specific leave banks. A small agency which has a disproportionate share of leave recipients may find the hour standards in section 6336(b)1 insufficient to meet the agency's needs while another agency with few leave recipients may be able to sharply reduce the hour standards thereby setting very different standards of leave recipient eligibility between agencies. A broad principle in insurance is to spread risk as widely as possible. Following this principle in this case would argue for a government-wide approach instead of the agency-specific approach. In addition, consolidating the administration costs may provide some economies of scale to the program.
- Second, while we applaud the inclusion of employee representatives in the administration of the program, if

such representatives are to play a full and meaningful role, provision should be made for "official time" (release time) for such employee representatives who are employed by the agency for their work on the leave bank.

- Third, care needs to be exercised so that employees do not become donors only when they are intending to be recipients. While section 6336(2) clearly intends to establish this criteria, we are not sure if it is sufficient to avoid such adverse selection action.
- Fourth, while this may be stepping beyond the scope of the proposed legislation, there may be merit in considering a mandatory donor program in the context of liberalizing the annual leave program. Our thinking is that _if_ everyone contributed to the bank, the required contribution would likely be quite low, and one would avoid the case of a non-leave donor being denied eligibility even though they had a certifiable medical emergency. But given the overall abysmal state of compensation of federal workers, a cut in such compensation (through a required leave contribution) could not be sanctioned. However, since it appears unlikely that Congress is likely to address the compensation gap directly through increased pay, a case could be made for liberalizing federal leave, and, in that context, a mandatory leave bank contribution could be considered.

Finally, if the Committee would like to use the five-year experimental program as an opportunity to examine a variety of leave-sharing programs, we would strongly recommend that the

Committee simply make leave sharing a mandatory subject for bargaining. In this way, workers and management could sit down and work out such programs to meet the widely varying needs at the federal worksites across the country. Often, legislating a personnel matter on a nationwide basis is less preferable than allowing the affected parties to work out the best solution through collective bargaining.

From a broader perspective, as this country moves toward the twenty-first century and as our economic system becomes more entwined with the world economy, several trends are self-evident. First, there has been a tremendous growth in the two-earner family. No longer can it be assumed that the family unit will have an adult available for full-time health care in the event of a medical or health emergency.

Second, it becomes clear that those countries which provide for a flexible work life which allows for the world of work to be integrated with education, child care, and families have an edge in competitiveness.

For these reasons, we think legislation which meets the intent of S.1595 and S.2140 is both humane and good personnel management.

Thank you.

STATEMENT OF

ROBERT M. TOBIAS
NATIONAL PRESIDENT
NATIONAL TREASURY EMPLOYEES UNION

Chairman Pryor, Members of the Subcommittee:

I am Robert Tobias, National President of the National Treasury Employees Union. I would like to thank you for giving NTEU the opportunity to express its support for S. 2140, the Federal Employees Leave Bank Act of 1988. This legislation would allow federal employees to help colleagues who are experiencing a personal hardship. As the exclusive representative of over 130,000 federal employees throughout 18 government agencies, NTEU fully supports this measure, and would like to commend you, Mr. Chairman, for introducing it and holding this hearing today.

The current system of earning and using leave is not always adequate. In instances where an employee or family member has a serious illness or medical condition, the amount of time required to stay home to recuperate or care for a loved one can quickly diminish any accumulated leave. Unfortunately, the only options available to an employee in that situation are leave without pay or simply quitting the job. Leave sharing offers an answer to this problem.

The concept of leave sharing is relatively new to the federal government. The first federal leave sharing effort took place in 1986, when a private bill providing a program for NTEU members Shannon and Joseph Chiles was enacted by Congress. Shannon Chiles had terminal cancer, and her husband was caring for her. Shannon and Joe had used up all their annual leave and were taking leave without pay. Dozens of IRS employees offered to donate unused sick and annual leave to the couple, and management would have agreed to the leave sharing, but was prohibited from doing so by federal law. (See 5 USC, Sections 6301 and 6307).

The Chiles' NTEU Chapter, Chapter 77, took the issue to their Representative, Congressman William Lehman. In the final days of the 99th Congress, legislation was enacted that allowed IRS workers in Florida to donate unused leave time to the couple.

The response was impressive. Several hundred employees, both management and bargaining unit members, donated about 5,000 sick leave hours and 1,500 annual leave hours to the Chiles family. In our December 1986 monthly union newsletter, we ran an article on Shannon and Joseph Chiles. We received an overwhelming response from federal employees who read the article and wanted to know if they could donate leave to the Chiles or others they knew to be in need.

Congressman Frank Wolf authored language in the Fiscal Year 1987 Continuing Resolution, PL 99-591, which authorized the Office of Personnel Management (OPM) to conduct an experiment on federal leave sharing. The experiment, which allowed for 3 participants, was an overwhelming success. The need for such a program was underscored by the fact that about 250 people applied to be one of the 3 participants in a period of 30 days. Congress recognized this need again in the Fiscal Year

1988 Continuing Resolution, by continuing and expanding the leave sharing experiment, making it available to an unlimited number of employees until September 30, 1988. This extension was enacted with the intent of authorizing a permanent program this year. Currently at NTEU, we hear almost daily from our membership about co-workers who could benefit from this important program.

The leave bank approach to establishing a permanent leave sharing program taken in S. 2140 differs from the House bill, H.R. 3757. The House legislation primarily provides for direct donations of leave from one employee to another, although it does provide for a one agency experiment with a leave bank. There are definite merits to both approaches. A leave bank system eliminates the serious administrative problem of dealing with the restoration of unused donated leave. It also provides a degree of privacy for the leave recipient, which could be very important to some individuals who, for whatever reason, do not want their circumstances widely known. On the other hand, one of the benefits of a direct donation approach is that some employees may be more inclined to donate leave for a person they know, or a situation they are informed about, rather than to a blind bank.

OPM has raised administrative concerns about both direct donations, because of the problems of restoration of leave to the donor, and leave banks, because of the degree of "administrative machinery" that would be involved. Since neither approach has been tried on a widespread basis, it is hard to know which would be more utilized by the employees or which is less administratively cumbersome.

We feel that the best way to address this situation legislatively would be to authorize a program experimenting with both leave banks and direct donations for a period of five years. The Leave Bank Boards that S. 2140 would establish for each agency could determine which approach would be suitable for that agency. They could even decide that a leave bank would be the best system in one region or other subdivision of the agency, and that a direct donation program would be more appropriate to another. The Board members would have the working knowledge of the agency needed to determine which approach would best address the needs of the employees, and be the most administratively feasible. It seems to us that this is the best way to actually find out which program would have the most long-term success.

We would urge you, further, to include some provision allowing for the donation of sick leave in S. 2140. We believe that any leave sharing program should include both sick and annual leave, and would urge that, at the very least, provisions similar to those in H.R. 3757, allowing for two sick leave donation experiments, be added to the bill.

S. 2140, like the House bill, mandates that all leave sharing will be done solely on a voluntary basis. It contains language prohibiting coercion to insure that no one is forced to participate against their will. We agree with this concept of voluntary participation, and believe that only the employee should decide how his or her annual leave is going to be used.

We also support Section 6334, which establishes a 3 person Leave Bank Board in each agency to administer the leave bank. The Board is required to have at least one representative of a labor organization or employee group, which we feel is crucial to the effective administration of the leave banks.

In closing, we feel that the establishment of a long-term, government-wide leave sharing program is an idea whose time has come. Federal employees have demonstrated their desire to participate in such a program and help their colleagues in need. Leave sharing is a no-lose situation for the government, both financially and in terms of employee morale.

Leave sharing may actually save the government money. Leave is donated on an "hour to hour" basis, with no monetary value given to the annual leave. Savings were accrued in the OPM leave sharing experiment because most employees who are in a position to donate leave have established seniority in the government. These employees tend to be in the higher GS grades and would receive the leave, or payment for the leave, at a higher scale than that of the leave sharing participant, in many cases. Furthermore, the retention of competent workers who return after absences on shared leave time will save the government additional money by eliminating the need to recruit and train new employees.

While we urge changes to incorporate sick leave, and to experiment with both leave banks and direct leave donations, NTEU supports the Federal Employees Leave Bank Act of 1988. We look forward to working with the members of this subcommittee to ensure enactment of leave sharing legislation.

I will be happy to answer any questions you might have.

SAF/slw/2845L

STATEMENT

BY THE

NATIONAL FEDERATION OF FEDERAL EMPLOYEES

Mr. Chairman and Subcommittee Members:

On behalf of the National Federation of Federal Employees, which represents over 150,000 Federal workers across the nation, I appreciate the opportunity to present our views on the concept of leave sharing for Federal employees. I commend you, Mr. Chairman, for your attention to this important issue, and look forward to working with you and the Subcommittee to develop a model leave sharing bank for Federal workers.

I am delighted that you have chosen this moment to examine the viability of leave banks for Federal workers, because clearly, a serious need for this legislation exists in the Federal Government. We are fortunate to live in an era when medical technology has progressed to the point that many who would previously have died of dread diseases are now able to recover and lead productive lives. The physical cost is often a gruelling series of treatments and rehabilitation sessions. But it is the financial costs, even with the best insurance policies, that can provide the hardest burden for the employee and his or her family. The loss of income associated with an extended recovery period can be, and too often is, an insurmountable burden for too many Federal employees.

Last summer, the Federal Employees Education and Assistance Fund, of which NFFE is a charter member, presented a check for $1,500 to Frances Scott, an employee at the Naval Observatory. Ms. Scott was on extended leave without pay because of cancer and had previously been on leave without pay in order to care for her daughter who had also become seriously ill. While FEEA was pleased to be able to help Ms. Scott in this manner, the $1,500 couldn't go as far as we wished. If Ms. Scott has been eligible for the benefits of a leave bank, her financial burden might have been lessened considerably.

Unfortunately, NFFE suspects that Ms. Scott's story is repeated year after year, in Federal installations around the country. Employees whose needs are well known to their co-workers can't receive the help those co-workers are willing to give because of restrictions against leave transfers. And while "passing the hat" for an ill co-worker can provide some assistance, few employees can afford the cash value of an entire day's paycheck, while the donation of one day of leave might be entirely within the co-workers' ability to provide.

NFFE has two suggestions for any legislation on Federal employee leave banks that may be introduced as a result of this hearing. First, it is important that employees covered by a negotiated agreement be able to participate in the leave bank as soon as the enacting legislation is signed. To ensure this participation, we suggest that language be drafted so that the leave bank policy is considered a mandatory subject of bargaining. In this way, Local unions could bargain with management according to the specific needs at the worksite, enabling all employees to participate in this benefit while preserving the pre-eminence of the negotiated agreement.

NFFE's second concern is that regulations concerning eligibility for the benefits of the leave bank be structured in such a way that favoritism would be impossible. Allowing the agency to consider the likely impact on morale and efficiency when reviewing a worker's request for leave needed for reasons other than the worker's own illness could open the door for favoritism.

On Tuesday, March 15, the House passed HR 3981, legislation introduced by Representative Gary Ackerman (D-NY) that would correct the ethics prohibition against subordinates donating items of value (i.e. leave) to superiors. Another bill by Mr. Ackerman, HR 3757, would extend the current temporary leave sharing program for three years. This legislation has been passed unanimously by the House Post Office and Civil Service Committee, and should be considered by the entire House in the near future. Both of these bills have NFFE's support and could provide the Subcommittee with an excellent starting point for formulating a permanent leave bank for Federal workers.

That concludes my statement. I will be happy to answer any questions.

National Council
SOCIAL SECURITY MANAGEMENT ASSOCIATIONS, INC.
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Trenton, NJ 08608

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STATEMENT OF

NATIONAL COUNCIL
SOCIAL SECURITY MANAGEMENT ASSOCIATIONS, INC.

For the

SUBCOMMITTEE ON FEDERAL SERVICES, POST OFFICE, CIVIL SERVICE
COMMITTEE ON GOVERNMENTAL AFFAIRS
U.S. SENATE

On S. 2140

FEDERAL EMPLOYEES LEAVE BANK ACT OF 1988

March 18, 1988

The National Council of Social Security Management Associations, Inc. (NCSSMA) supports S. 2140, creating the Federal Employees Leave Bank.

Many of our members -- managers and supervisors in nationwide field offices and teleservice centers of the Social Security Administration -- know from experience that there are employees in need and generous co-workers wishing they could help. Applications on behalf of a number of Social Security employees were submitted to OPM for consideration for leave transfer during the first year's test program.

The Federal Employees Leave Bank Act will provide a welcome opportunity for federal employees to give a meaningful gift to their co-workers, by allowing the transfer of accrued annual leave from one employee to another. By permitting personal employee-to-employee leave transfers to continue within the framework of an agency-wide leave bank, S. 2140 ensures the program's success.

NCSSMA also commends S. 2140 for providing access to the Merit Systems Protection Board for any employee who is subjected to coercion in connnection with the leave bank. We believe stringent safeguards are required to minimize the opportunity for any leave-sharing program to be abused.

We have no objection to the limitations on sick and annual leave which may be accrued while a leave gift recipient is using donated leave. We also support the restriction on amounts of leave which may be donated by any one employee during a year. As supervisors and managers we know very well that federal employees -- and their families -- benefit greatly when they are able to get away from the demands of their jobs for a time. Work performance and effectiveness are also enhanced after a period of leave, so it is in the best interest of government operations as well as employees themselves to disallow donations of more than half of one's annual leave.

We also agree strongly that the program should be restricted to gifts of annual leave. The transfer of sick leave between federal employees creates several problems. Employees cannot forsee how great their own need for accrued sick leave may become, should illness or accident prevent them from working for an extended period of time. They and their families need the security of a sick leave reserve as insurance against the unexpected. In addition, there are restrictions on the use of sick leave by federal employees which, when applied to transferred sick leave, would make monitoring sick leave use by gift recipients administratively difficult.

Annual leave has an immediate value to the employee -- it requires a generous decision to contribute annual leave to a co-worker. The same is not true for sick leave contributions. And the immediate costs of sick leave transfer would fall to the government rather than the individual. It would be extremely unfortunate if the cost factor of including sick leave jeopardized the future of the program.

Finally, we are concerned about the potential for abuse in a program such as this through misrepresentation on the part of applicants or collusion between an applicant and a leave donor. We believe that additional information and recommendations should be provided by the manager who supervises the applicant on the job. In this way, supervisory managers would be part of the selection process by providing verification of essential information concerning the applicant, the applicant's work and leave history, and the personal or family emergency which precipitated the need for additional leave. Either OPM or the Leave Bank Board at each agency could formalize the information gathering procedure and determine what questions should be asked of each applicant's supervisor.

Thank you for this opportunity to submit our comments and suggestions on S. 2140.

JOHN GLENN, OHIO, CHAIRMAN

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United States Senate
COMMITTEE ON
GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

February 23, 1988

Mr. O. Don Chapoton
Deputy Assistant Secretary
Department of the Treasury
15th Street and Pennsylvania Avenue
Washington, D.C. 20220

Dear Mr. Chapoton:

I am writing to request an advisory opinion regarding the tax implications of the temporary federal leave sharing program. You may know about this program because an employee from the Internal Revenue Service, Mr. William Ault, was one of three employees selected by the Office of Personnel Management to participate in the 1987 leave transfer program. Mr. Ault received 7,200 hours of donated annual and sick leave through the generosity of IRS employees in the Cincinnati District Office. Unfortunately, he used only 650 hours before he passed away in December.

As part of the Continuing Resolution, P.L. 100-202, Congress extended and expanded the temporary leave sharing program through fiscal year 1988 with the intent of enacting a permanent leave program this year.

As Chairman of the Governmental Affairs' Subcommittee on Federal Services, Post Office, and Civil Service, I will be holding a hearing on March 18, 1988, to examine the concepts of leave sharing and leave banks.

On August 5, 1987, Senator Domenici (R-N.M.) introduced S. 1595, the Federal Employees Leave Act of 1987. The bill would authorize a Governmentwide program allowing federal workers to voluntarily donate their unused annual leave to co-workers in need of assistance. This month, I plan to introduce legislation to establish a federal leave bank program. Under my proposal, employees would donate a minimum amount of annual leave to the bank which would entitle them to apply for leave if they were experiencing a personal emergency. I view my plan as a form of insurance against a long period of unpaid leave. The tax implications of these proposals for the leave donor and leave recipient have yet to be explored and clarified.

I would appreciate receiving your response by March 11 to assist me in preparation for the hearing. If more information is needed, please contact Ms. Denise Boerum of my subcommittee staff at 224-2254.

Sincerely,

David Pryor

cc: The Honorable Lawrence Gibbs

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

March 17, 1988

The Honorable David H. Pryor
Chairman, Subcommittee on Federal Services,
Post Office, and Civil Service
Senate Committee on Governmental Affairs
Washington, DC 20510

Dear Mr. Chairman:

This is in reply to your letter to Treasury Assistant Secretary Chapoton of February 23, 1988, regarding the hearing to be held on March 18, 1988, by your subcommittee to discuss the concepts of shared leave and leave bank programs. In your letter, you request our views concerning the tax consequences of leave transferred under these programs.

The existing pilot programs and the proposed leave bank program permit federal employees to transfer accrued annual leave to fellow employees faced with a personal emergency. The federal employer may require proof from the leave recipient of the personal emergency before crediting the recipient's account with the transferred leave. The recipient must exhaust his or her own annual and (if appropriate) sick leave balances before using the transferred annual leave. Any unused leave cannot be "cashed-in" by the recipient but must be returned to the donors in proportion to the amounts they had donated. We assume under either the existing direct transfer programs or the leave bank program that the recipient is entitled to receive pay at his or her regular compensation level when using the transferred leave. In addition, we assume that under both the existing and proposed programs, employees who transfer leave receive no additional benefit in consideration of the transfer.

These programs present complex and uncertain tax problems. For example, the tax consequences to the donor and the donee will differ depending upon whether the transaction is characterized as an anticipatory assignment of earned income by the donor; a forfeiture by the donor of accrued leave; or a transaction in which there is no economic gain to the donor. Although the incidence of taxation may vary depending upon the characterization of the transaction, one of the parties will always be taxed, unless Congress enacts legislative relief.

Generally, a taxpayer may not assign earned income to another person before the taxpayer reports the earnings in his or her gross income. This judicially developed doctrine is called the "assignment of income" principle. Here the donor may be viewed as having earned by performing services the right to receive paid annual leave. When this valuable right to income is given to another, the donor has exercised control over it, even though it might otherwise have been forfeited. When the donee uses the leave, he or she receives income, and that income is taxed to the donor, whose efforts earned the leave used to pay for it. It is as if the donor actually received the extra salary and transferred it to the donee. This approach views the donee as having received a gift from the donor. Consequently, the donee is not required to include the amount received in income because it qualifies as a tax-free gift. The donor, however, will be required to pay a gift tax on the value of the gift if it exceeds the statutory $10,000 exclusion per donee. This characterization enjoys the most support on the facts presented.

On the other hand, the transaction could be viewed as a forfeiture of leave by the employee back to the employer. Thereafter, the employer allocates the leave to another employee. This results in a reallocation of compensation by the employer without any exercise of control over the right to income by the forfeiting employee. The forfeiting employee will be viewed as having no taxable event that will require the recognition of income; he or she has simply returned the right to the employer without having used it or directed its use for his or her benefit. The recipient employee, however, will be treated as receiving the leave and the resulting compensation because of an employment relationship and is therefore required to include such amount in his or her taxable income in the year received. This approach is plausible in the case of the proposed leave bank, particularly if the donating employee does not identify the specific recipient, but is not as sound as the assignment of income characterization in the case of the pilot program, in which donating employees give leave directly to specific donees, with the government playing only a ministerial role.

Another possible analysis is to view the donor as having received no real economic gain upon which he or she should be taxed. Generally, in order for the incidence of taxation to occur, a taxpayer must have received an accession to wealth. The general statutory provision of the Tax Code, section 61, under which all compensation must be included in a taxpayer's income has this principle as its underpinning. Viewed on an annual basis the donor generally will not have a diminution or augmentation in his or her actual compensation for the year. The compensation received by the donee during the year, however, will represent an economic gain to the donee that is subject to tax.

These newly-created programs present complex tax problems the solutions to which are unclear. Thus, it may be appropriate to consider clarifying legislation. In any event, careful consideration needs to be given to the structure of any leave sharing programs enacted in the future. As stated, it is our view that under current law, one party or the other will be taxed, depending upon the exact design of the program. Because of the uncertainties surrounding the proper application of the tax law to these programs, it may be appropriate that any legislation also provide for retroactive application.

If my office can be of any further assistance, please do not hesitate to contact me at 566-4735.

With best regards,

Sincerely,

Peter K. Scott
Deputy Chief Counsel

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

COMMISSIONER

MAY - 4 1988

The Honorable David H. Pryor
Chairman, Subcommittee on Federal Services,
Post Office and Civil Service
Senate Committee on Governmental Affairs
601 Hart Senate Office Building
Washington, DC 20515

Dear Mr. Chairman:

I am sorry that my schedule did not allow me to meet personally with you and the other Members of your Subcommittee to discuss the concepts of shared leave and leave bank programs. I have read and am fully supportive of the testimony which Michael Dolan presented to your Subcommittee at last month's hearings.

The Federal government must concentrate efforts on alternative benefit and incentive programs to attract and retain a qualified workforce. I believe that the leave sharing demonstration project is one such alternative. Because we want IRS to be a model employer, we are very pleased to have been in the forefront of this experiment, and look forward to continued participation in the leave sharing programs under consideration. It is our hope that programs authorized under permanent legislation will allow agencies the administrative flexibility necessary to compensate for the variety of missions, locations, and workforces involved.

We would be pleased to provide assistance in resolving the issue of the tax liability of transferred leave. Because of the uncertainties surrounding the proper application of the tax law to these programs, you may want to work with us and with the Treasury Department on bill language that would clarify the taxability issues. Please don't hesitate to contact our Legislative Affairs staff if we can be of assistance.

With best regards,

Sincerely,

Larry

United States
Office of Government Ethics
P.O. Box 14108
Washington, D.C. 20044

MAR - 4 1988

Honorable David Pryor
Chairman
Subcommittee on Federal Services
Post Office and Civil Service
Committee on Governmental Affairs
Washington, D.C. 20510-6250

Dear Mr. Chairman:

This is in response to your letter of February 22, 1988 in which you requested the views of this Office on the application of 5 U.S.C. 7351 to the proposed federal leave sharing program, the potential abuses of such a program if the restrictions of section 7351 did not apply and any safeguards that should be established to prevent such abuses.

First, this Office technically does not have enforcement responsibility for 5 U.S.C. § 7351. There is, however, a similar provision in the model standards of conduct for executive branch employees found at 5 C.F.R. 735.202(d). That regulation prohibits the same conduct as section 7351 with very limited exceptions. Therefore, in a sense the Office has responsibility for the same kind of proscription.

In my opinion the gift of annual leave is a gift. The offer of it by a subordinate to an official supervisor would be prohibited by the regulation. Indeed while the regulation has an exception for certain special nonrecurring occasions outside the work relationship where friends might voluntarily offer a gift, the exception requires that if an individual who is also a supervisor is to be the recipient, the gift must be voluntary and it must be nominal. While the illness of a supervisor may be a nonrecurring event, the gift of even one hour of annual leave will, even at present salary levels, fall outside reasonable notions of nominal value. Therefore, even the present exception in the model regulation would not be applicable.

Nonetheless I believe that a truly "blind" leave pool would not pose a problem under this regulation. A blind pool would be leave offered without knowledge of or interest in the ultimate recipient. If, however, employees who provided leave to the pool could designate or even suggest a recipient and that recipient were a supervisor, such designation would be tantamount to an offer and thus run afoul of the regulation as it now stands. In our view this designation, if honored, would still constitute a gift to a supervisor and be prohibited. Of course a leave bank without a designation of beneficiary would eliminate this problem.

Obviously, the statute and the regulation were intended to prohibit supervisors from abusing their positions and employees from currying favor from those who supervise them. The basic concept of the restriction is a very good one. On the other hand, employees do develop honest and deep friendships with their colleagues and there are certainly instances where voluntary gifts can be made and accepted without any potential harm.

Therefore, in the area of leave sharing you might wish to consider the following kinds of safeguards. These, of course, are not intended to be exclusive.

1. In any case where an individual recipient has been designated, regardless of supervisory relationship, the gift must be strictly voluntary without coercion from any individual. A sanction for coercion might be helpful in inhibiting the solicitation of gifts by a supervisor for himself or for others.

2. Assuming the gift is voluntary, an individual could designate a gift of leave to a supervisor if that supervisor was not reasonably expected to return to a position supervising the donor when the need for the leave ceased. This would be useful when the supervisor was terminally ill, had suffered an injury which would prohibit his returning to his prior position, or where the donating employee would not reasonably be expected to hold a position supervised by the recipient upon his return.

If these or similar kinds of safeguards were provided for by statute and the provisions of 5 U.S.C. § 7351 were amended accordingly, it would then be appropriate to amend the model standards of conduct at 5 C.F.R. 735.202(d).

If you have any questions about our suggestions or the role of this Office with regard to the statute, please do not hesitate to contact me.

Sincerely,

Frank Q. Nebeker

Frank Q. Nebeker
Director

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5057662538 POM TDRN ALBUQUERQUE NM 90 11-19
0241P EST 14:40 EST

western union **Telegram**

SENATOR PETE V DOMENICI
CAPITOL ONE DC 20510

LET ME URGE YOUR ATTENTION AND ACTION ON THE LEAVE SHARING MATTER. I HAVE RETIRED EFFECTIVE NOVEMBER 3 SO MY PROBLEM IS NO LONGER CRITICAL. HOWEVER HAD THE PROGRAM BEEN IN PLACE I MIGHT HAVE BEEN ABLE TO REMAIN ACTIVE FOR A LONGER TIME. THE PROJECT IS IMPORTANT AND NECESSARY AND I CERTAINLY HOPE THAT YOU WILL TAKE THE NEEDED STEPS TO SEE THAT THE LAW IS ACTED UPON. LET ME URGE YOU TO TACKLE THIS MATTER WITH ALL POSSIBLE SPEED. THANK YOU FOR YOUR CONCERN FOR THE FEDERAL EMPLOYEES.

GERALDINE GRENKO 3518 GEORGIA NORTHEAST ALBUQUERQUE NM 87112
1323 LONGWORTH BLDG
WASHINGTON DC 20515

14:40 EST

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§ 630.910 Restoration of transferred annual leave.

(a) Under procedures established by the leave recipient's employing agency, any transferred annual leave remaining to the credit of a leave recipient when the personal emergency terminates shall be restored, to the extent administratively feasible (as determined by the leave recipient's employing agency), by transfer to the annual leave accounts of leave donors currently employed by a Federal agency and subject to Chapter 63 of Title 5, United States Code, on the date the personal emergency terminates, as provided in paragraphs (b) and (c) of this section.

(b) The amount of unused transferred annual leave to be restored to each leave donor shall be determined as follows:

(1) Divide the number of hours of unused transferred annual leave by the total number of hours of annual leave transferred to the leave recipient;

(2) Multiply the ratio obtained in paragraph (b)(1) of this section by the number of hours of annual leave transferred by each leave donor eligible for restoration under paragraph (a) of this section; and

(3) Round the result obtained in paragraph (b)(2) of this section to the nearest increment of time established by the leave donor's employing agency to account for annual leave.

(c) If the total number of eligible leave donors exceeds the total number of hours of annual leave to be restored, no unused transferred annual leave shall be restored. In no case shall the amount of annual leave restored to a leave donor exceed the amount transferred to the leave recipient by the leave donor.

(d) Transferred annual leave restored to the account of a leave donor before the beginning of the third biweekly pay period before the end of the leave year shall be subject to the limitation imposed by 5 U.S.C. 6304(a).

(e) Transferred annual leave restored to the account of a leave donor after the beginning of the third biweekly pay period before the end of the leave year shall not be subject to the limitation imposed by 5 U.S.C. 6304(a) until the end of the leave year following the leave year in which the transferred annual leave was restored.